

# Report of the Action Group on Processions

March 2024

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## Terms of Reference

### Aim of the Action Group on Processions

To develop next steps based on, but not limited to, the conclusions and recommendations set out in the report of the Short Life Working Group on Facilitating Peaceful Assemblies in Scotland to improve the facilitation of processions in Scotland. All actions and next steps should be compatible with human rights.

### Membership

Dominic Bryan (Chair)	Queens University Belfast
Mairi Millar	Glasgow City Council
Andrew Mitchell	Edinburgh City Council
Gerald Corrigan	Police Scotland
Neil Jarman	Independent Human Rights Advisor
Elisa Bevacqua	COSLA
Gerry Mays	SOLAR
Graham Boyack	Scottish Mediation
Lorraine Gillies	Scottish Community Safety Network
David Bell	Scottish Government

## Summary

The Action Group on Processions has set out five recommendations that it feels should be taken forward as a result of their work. These are presented to the Scottish Government, CoSLA and Police Scotland for consideration. If these recommendations are accepted, Action Group members would be happy to continue to work with all partners to develop and deliver these actions. The actions are:

- Working in partnership with local authorities, develop a minimum standard for the provision of information on the notification process to ensure that consistent information is included on all local authority websites. We recommend that this is modelled with one or more identified local authorities to provide a best practice example which can provide a template for all local authorities.
- Statutory agencies, including Police Scotland, Scottish Government and local authorities, should work together to make sure publicly presented information on processions is clear and compliant with human rights.
- Develop or enhance current training or briefing packages for local authority officials and elected members to help inform and share good practice on the responsibility for, and the process of, facilitating peaceful public processions in Scotland and how the protection of human rights is central to this.
- As part of the review and development of local authority websites, consideration should be given to making sure the need for transparency and confidentiality are addressed at all stages of the notification process.
- Following assessment of the pilot, if successful, the Scottish Government should provide resource to extend a training programme for processing organisations to access and train stewards and marshals.
- Consideration should be given to learning and sharing best practice across Scotland annually through a 'light touch' review mechanism.

Additionally, the Action Group felt that:

- The notification process should make clear that processions do not require to be licensed and that in almost all circumstances those seeking to march will have their procession facilitated even if some restrictions or conditions need to be placed on it.
- The notification process is about enabling the local authority to better facilitate a fundamental human right by enabling the notified procession, and taking steps to protect public order, public safety and ensuring the human rights of those not participating in the procession are balanced with those of participants in the procession.
- Any form of restriction on the human right to process must always be prescribed by law, necessary (that is required to enable the authorities to meet their positive obligations to protect human rights) and proportionate (that it imposes the least possible restrictions to address any issues of concern).
- The procedure for providing advance notification should not be onerous or overly bureaucratic. In particular the information that is required should be kept to the minimum that is relevant to the aims of the notification process.

- All public procession organisers should provide their own stewards, but it needs to be clear that there is no legal requirement to do this.
- The provision of a risk assessment should not be a condition for a public procession, although this should be encouraged as good practice.
- Late notifications of intent to hold a public procession should always be given due consideration.

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## Background

1. The Action Group on Processions considered the conclusions and recommendations of the [Short Life Working Group on Processions in Scotland](#) as well as previous recommendations from work commissioned by the Scottish Government on processions.
2. Freedom of peaceful assembly is a cornerstone of democratic society. Legislation and institutional structures govern the exercise of freedom of assembly.
3. In Scotland, Section 62 of the Civic Government (Scotland) Act 1982 requires the organisers of a public procession to provide 28 days notification of their intention to process to the local authority in whose area it is taking place. Advanced notification to local authorities is to enable and facilitate the right to process to be exercised and ensure time is available to consider and discuss community impact or measures which may be required for purposes of public safety.
4. The presumption in the notification framework is that the organiser of a procession can proceed with their proposed procession unless and until the relevant authority intervenes. Local authorities can place restrictions on proposed processions, however, any form of restriction on the fundamental human right to public assembly must always be prescribed by law, necessary and proportionate.
5. The human rights of members of the public not involved in processions, and communities impacted by processions, need to be taken into account by authorities as part of the facilitation of processions. However, the starting point of the Action Group was to try to improve the facilitation of processions where possible.
6. The Action Group brought together all previous activity relating to processions and considered this through four main strands:
  - Human Rights: Language and Training
  - Human Rights: Process and Decisions
  - Transparency and Confidentiality
  - Partnership and Civic Society
7. The Human Rights: Language and Training strand considered the overall need to improve understanding of the right of freedom of peaceful assembly both within institutions and for the public and provide support on public information on processions to ensure compliance with human rights.
8. The Human Rights: Process and Decisions strand considered the integration of human rights approaches to freedom of peaceful assembly in relation to the criteria set out in the Civic Government (Scotland) Act 1982.
9. The Transparency and Confidentiality strand considered the need for greater clarity and understanding in the processes relating to the facilitation and

protection of the right of peaceful assembly including receiving input from members of the public.

10. The Partnership and Civic Society strand considered the role of the state in developing civic society approaches to freedom of peaceful assembly.
11. The activity being proposed by the Action Group is set out in the summary section of this report. The body of this report sets out the background to the proposed activity.

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## **Actions**

The Action Group aimed to identify practical steps that could be taken to improve the facilitation of processions by building on the work of the Short Life Working Group on Processions in Scotland. The Working Group completed its report in 2023. At the outset it was recognised by the Action Group that it was essential to ensure that a focus on human rights was central to all of its considerations and recommended action.

In doing this the Action Group wanted to address a perceived misconception of the notification process which is often viewed as a licencing application which can be rejected by local authorities on their own grounds. When reading this document and commenting on the processions process, it is important to understand that organising a procession is part of exercising the right to peaceful assembly and that a procession does not need to be licensed or authorised. The requirement on organisers of processions is that they formally notify the local authority of their intent to process with key details including; date, time and route, number of people expected to participate and arrangements made for stewarding to ensure that those authorities are able to take the necessary steps to facilitate the procession and protect the right to peaceful assembly, although there are times when restrictions are applied or a procession can be prohibited by the local authority.

### **Human Rights: Language and Training**

#### **Public Information**

In response to the findings of the Short Life Working Group which highlighted that there is a need to thoroughly review the language used to describe the notification process on local authority webpages, corresponding forms and relevant guidance, the Action Group carried out a short review of local authority websites. This involved looking at the location of information as well as the information published, considering these from a human rights perspective. The review showed the Action Group that almost all local authorities websites have:

- A notification form for those wishing to process and a code of conduct policy in place, but these vary in detail and language and could be more consistent.
- A record of all upcoming notifications received for the public to access although some can be difficult to locate.
- A processions policy and information located within licensing or entertainment events sections of their website.

The Action Group observed that many of the website pages can be difficult to find and it can be difficult to locate specific information. Only some local authorities explained the human rights issues surrounding processions and the need to balance different rights (such as those of the organisers and the communities impacted by the procession), and often such explanations were vague.

Each local authority website gave information on how organisers should notify them of a planned procession. However, different local authorities use different language to describe the notification process and provide different levels of guidance which could be confusing for those organising multiple processions in different parts of the



country. In addition, some local authorities require organisers to provide different types of information, including in some cases the need for a risk assessment to be undertaken by the organisers.

The Action Group believe that a greater degree of consistency across information made available on public websites would be beneficial and help strengthen the public's understanding of the process for notifying processions.

Many local authorities require the organiser of a procession to provide a risk assessment as part of the notification process. It should be clear that there is no legal requirement on organisers to complete and submit a risk assessment form, however, it was felt that it was reasonable to encourage and assist organisers to do so. The risk assessment process should always be proportionate and should only focus on the responsibilities of the organiser rather than on the wider management of risks to public order, which remain the responsibility of the police and partners.

**Action: Working in partnership with local authorities, develop a minimum standard for the provision of information on the notification process to ensure that a consistent set of baseline information is included on all local authority websites. The Action Group recommend that this is modelled with one or more identified local authorities to provide a best practice example which can provide a high-level template for local authorities, to adapt as appropriate.**

The Action Group recognise that members of the public may seek clarification from other agencies about their rights to organise a procession or their rights as a member of a community that a procession may pass through. Organisations such as the Scottish Government and Police Scotland should make sure they are providing clear information on their websites about the right to public assembly. Ideally, this should follow the best practice that the Action Group are recommending is developed for local authorities.

**Action: Police Scotland, Scottish Government, local authorities and CoSLA, should work together to make sure publicly presented information on processions is clear and compliant with human rights.**

### **Human Rights: Process and Decisions**

The Short Life Working Group on Facilitating Peaceful Assemblies in Scotland recommended that the 'facilitation and regulation of processions can be improved by reinforcing a human rights approach and exploring the resourcing and processes that underpin this approach'. Therefore, in order to ensure this approach, it is important to consider the rights and legislation that underpin processions. The right to peaceful assembly is part of the European Convention on Human Rights. It is a fundamental freedom along with right to privacy; right to thought, conscience and religion; and right to expression and association. These fundamental freedoms are considered core rights in a democratic society.

The right to peaceful assembly allows people to gather together in public to:

- Express their views on political, social, religious and other topical issues.

- Celebrate their history and identity.
- Commemorate past actions and events.

Protecting this right is particularly important to make sure the voices of people who are in minority communities or on the fringes of society can be heard. For example, those who hold political views that are not reflected by mainstream political parties and people from minority ethnic and religious communities may have limited access to mainstream media or to people in power, and it is essential that society makes sure that those in the minority are able to have their voices heard.

However, the right to peaceful assembly is not unlimited and assemblies may be restricted, or even prohibited, in certain circumstances. The grounds on which restrictions can be imposed are set out in the European Convention and include concerns over national security and public safety, the prevention of disorder and crime, the protection of health and morals or for the protection of the rights and freedoms of others.

In Scots law these grounds have been interpreted as public safety, public order, damage to property and disruption to the life of the community under the Civic Government (Scotland) Act 1982.

Obligations on statutory agencies to facilitate and protect processions place a responsibility on local authorities to aim to ensure that a peaceful procession is able to take place at the time, place and in the manner that the organiser wishes. It is the responsibility of the state to take the necessary actions to minimise any disruption a procession may, or may potentially cause, while facilitating that procession.

In considering whether a procession might be restricted by a local authority during the notification process, or by Police Scotland when a procession is taking place or about to take place, they must ensure that any restrictions are lawful, necessary and proportionate. This means that restrictions should only be imposed if no other means can address the concern that has been identified, and any restrictions must be the minimum action needed to address the identified concern. Banning a procession should always be the last resort.

The Action Group believes that there is common understanding across Scotland of the above duties and processes but additional awareness raising of the facilitation process would help develop understanding further. To further enhance the work taking place to facilitate peaceful assembly across Scotland, the Action Group will consider how existing local authorities and other relevant partners' training and resources could be enhanced, and whether the development of a national briefing package could potentially help support processes locally.

Annex A discusses the importance of the right to peaceful assembly as a fundamental freedom and sets out some of the grounds under which the right to peaceful assembly may be legitimately restricted, based on international human rights standards.

Annex B provides information on notification requirements, international human rights standards and current practices in Scotland.

**Action: Consider developing or enhancing current training or briefing packages for local authority officials, elected members and other relevant partners to further support understanding on the responsibility for, and the process of, facilitating peaceful public processions in Scotland and how the protection of human rights is central to this.**

## **Partnership Working**

The SLWG on Facilitating Peaceful Assemblies report underlined the 'vital importance of interagency working and bringing together interested parties. Partnership working is central to the running of a robust notification process in every local authority. The process for doing this varies across the country and, for example, some local authorities have created Event Planning and Operations Groups (EPOCs) and others use Safety Advisory Groups (SAGs) to bring partner organisations together. Partners can include Police Scotland, Scottish Fire and Rescue Service, Scottish Ambulance Service, transport operators and local authority officials covering issues such as road management and park services. Partnership groups do not need to be limited to these organisations and can include anyone that is important to the decision-making process.

Working together these organisations seek to facilitate the notified procession with a minimum of disruption to members of the public, however, when an agreement on the details of a notification cannot be reached the local authority has the power to impose conditions on the notified procession.

In some cases, the local authority may use its committee structures to come to a decision on whether conditions should be placed on a notified procession. As a result, these committees play a very important role in ensuring the vast majority of processions in Scotland are appropriately facilitated to balance the rights of those processing with the rights of communities impacted by the parade.

## **Transparency and Confidentiality**

Within the SLWG on Facilitating Peaceful Assemblies report the importance of transparency in the process was underlined but it was also suggested that 'some consideration be given to introducing a level of confidentiality in relation both to evidence submitted to local authorities and to the deliberations of the relevant committee'. Therefore it is important to explore transparency and confidentiality within the process as well as the balance between them.

There is an obligation on statutory agencies to facilitate and protect peaceful processions and not interfere when there is no need to do so. While it is recognised that these obligations place a responsibility on authorities to ensure that a peaceful assembly is able to take place at the time, place and in the manner that the organiser wishes, it is also recognised that this is not always possible, and negotiation may be required on the detail of a notified procession.

When negotiations do not reach a satisfactory agreement between authorities and procession organisers a decision-making process is required. In these

circumstances, it is important that there is transparency in responding to notifications for both the organiser and public.

### **Transparency within the Notification Process**

It is important for local authorities to ensure that their website, notification forms and processes support transparent decision making within the notification processes. The language used should at all times avoid reference to permissions or a licensing process and should refer to notifications in the context of the right to freely assemble.

A central aim of publicly providing this information is to allow those outside local authorities the opportunity to comment on notifications, and it is important that the process for doing this is clear including setting out how and when procession organisers will be advised of any comments and how they can respond to these.

Where a decision is made by a local authority it is important that an explanation of the reasons for that decision are made clear. Additionally, where an order has been made under Section 63 of the 1982 Act to place conditions on a procession, the order must clearly explain the terms of that order as early as possible (guidance suggests a minimum of 2 days) [\[add link to Scottish Government guidance on marches and parades\]](#) and how the right to appeal can be exercised by the organiser.

### **The Balance Between Transparency and Confidentiality**

Generally it is expected that all information will be made publicly available and a decision should be taken in public if at all possible. Care should be taken in the publication of the personal details (that is the name, address and other contact information) of individuals who submit objections to a procession as this could undermine the willingness of the public to engage with the process by making their concerns and objections known.

When a member of public attends a committee meeting, care must be taken to accommodate any wish not to be identified. Participation by members of the public should not be discouraged by placing them in a situation which may make them feel vulnerable.

**Action: As part of the review and development of local authority websites, consideration should be given to making sure the need for transparency and confidentiality are addressed at all stages of the notification process.**

### **The Value of Annual Publicly Available Information**

The SLWG on Facilitating Peaceful Assemblies report detailed they were struck 'that Council Officers across the Local Authorities in Scotland dealing with parades seemed not to have many opportunities to share and learn experiences' and suggested that a process of information and good practice sharing should be developed. It is worth looking at current publicly available information and reviewing if there is value in collating and communicating this more centrally.

Transparency within local authorities can be found via their publicly available information on the notifications received each year, and the number of processions that take place as a result of these. These includes details such as the organiser, route and approx. number of participants. Additional information on the number of notifications to which changes are agreed, or conditions imposed, would help build on this transparency and demonstrate the actual extent of condition imposition required.

The Action Group believe that this information should be relatively easy to collect at local authority level and if collated annually across Scotland it could offer the potential to review changes taking place and develop a better understanding of the resources required to support the safe delivery of public processions in Scotland.

Consideration could also be given to local authority officials across Scotland meeting annually with the Scottish Government, Police Scotland and other interested parties and experts and to discuss issues arising over the previous year and comparing the effectiveness of how these issues were addressed to share best practice and learning through a continuous cycle of improvement.

**Action: Consideration should be given to learning and sharing best practice across Scotland annually through a 'light touch' review mechanism.**

## **Partnership and Civil Society**

Partnership is important in all aspects of community life and this is no different in the facilitation of processions between statutory bodies responsible for facilitation, procession organisers and communities involved, touched and affected by those processions. Dialogue and involvement in processes and decision making build better relationships between all those involved.

### **Civic Society and Peaceful Assembly**

A strong civic society, and thriving democracy, is one where diverse voices are heard and people are actively engaged in the decision making processes for matters that impact on them. Conflicting political beliefs and ideas are a necessary and natural outcome of an engaged society. As a result, supporting freedom of assembly, and the right to hold processions, is central to maintaining a healthy democracy.

Maintaining a healthy democracy is supported by building relationships, knowledge and skills between civic society and political groups to make sure the right to peaceful assembly is protected. For example, while some activist groups may view the police as a reflection of the state they are protesting against, there can be long term benefits in developing dialogue with groups and organisations seeking to hold processions and protests to support better management of the particular form of protest they are seeking to hold.

This could include developing the skills of protest groups on things like event and risk management, negotiation, stewarding and public safety. Investment in such skills development by national and local government and policing bodies could potentially result in better facilitation of processions and protests resulting in a reduction in the resources needed from statutory agencies.

### **Mediation, Negotiation and Facilitated Dialogue**

It is important to be clear about what we mean by mediation, negotiation and facilitated dialogue whilst recognising that the skills used are similar but are used in different ways.

The classic definition of mediation is where an independent person (the mediator) helps parties (often two but it can be more) to resolve disputes or disagreement by facilitating discussions through a process that allows the parties to come a solution that is mutually agreeable. In mediation it is those who are being mediated who drive the discussion through the mediator to resolve the situation in a way that satisfies the needs of all those being mediated. This could include identifying and addressing the underlying issues that led to the problem arising and working with the different parties to address these. Mediation can be a lengthy process but can also be extremely beneficial in supporting long term relationships where mutual trust and understanding are needed as the bedrock of that relationship.

Negotiation is similar to mediation, but in a negotiation the aim is to achieve a mutually agreed outcome and there is no need to go beyond resolving the immediate problem that is being faced. Therefore, this is a quick way to move beyond a problem that is presenting itself as an obstacle, but the underlying issues that led to that problem will not be addressed.

Facilitated Dialogue is similar to mediation that the key aim over a period of time is to help people from different communities with different views, beliefs and backgrounds develop an understanding of different views, beliefs and backgrounds of others. This allows everyone involved to talk about those differences in a way that is respectful and not confrontational. It seeks to help people focus on listening, understanding needs, focusing on interests and building relationships based on trust.

Such dialogue will often be facilitated by mediators, but can be facilitated by anyone who is able to take and maintain an independent position between all of the different parties involved. The key differences between mediation and facilitated dialogue are that facilitated dialogue can involve multiple parties from across the whole of society and can continue over many years.

### **Using Mediation, Negotiation and Facilitated Dialogue**

The distinctions are important in terms of what approach might be recommended in different circumstances. For example, it is unlikely that mediation in the above form would be part of the process of notification and that discussions would fall into the category of negotiation.

Negotiation can be an important part of the facilitation of freedom of peaceful assembly as facilitating processions involves considering a number of different elements (such as the timing of the procession and the route it will take) that need to be agreed between the organisers, the local authority and the police.

However, there is a clear role for facilitated dialogue in relation to processions and particularly in relation to relationship building between local authorities, police, those who organise processions on a regular basis and the communities impacted by those processions. Understanding the issues around processions can help to avoid conflict and in the long term facilitated dialogue can build trust to resolve potential problems in an effective and engaging way.

Training organisations and communities involved with, and affected by, processions in dialogue techniques can help the self-management of problems being faced and help to create a more positive culture between procession organisers and the communities impacted by their processions. Training people in such skills won't necessarily reduce the areas around where conflict may occur, but it will better equip people to deal with the any situations that arise.

## Training Programme for Stewards

Enhancing the training of stewards to organise, engage and communicate with fellow processors will ultimately compliment and potentially reduce the need for public order policing.

We have taken this forward by developing a pilot training programme for processing organisations. Working with the [Centre for Good Relations](#) free training sessions for stewards and marshals have been made available. The training was available to any organisation involved in running processions and the pilot will be completed by April 2024. An evaluation of the pilot will then be undertaken to assess the impact of the training and whether the demand for it would justify an extension of the training programme beyond April 2024.

The training pilot's aim is to build the capacity of organisations to plan, prepare, marshal and manage processions and other forms of public gathering in a safe and professional manner, with particular focus on safety and risk management. This training will be made up of four sessions:

- Session One: The Law And Best Practice In Relation To Marshalling.
- Session Two: Public And Personal Safety And Risk Management.
- Session Three: Planning And Preparation Of Events/Parades And Gatherings.
- Session Four: Community Relations And Conflict Prevention, Management.

**Action: Following assessment of the pilot, if successful, the Scottish Government should provide resource to extend a training programme for processing organisations to access and train stewards and marshals.**



## ANNEX A

### The Importance of Freedom of Assembly

This short paper outlines the importance of the right to peaceful assembly as a fundamental freedom and sets out some of the grounds under which the right to peaceful assembly may be legitimately restricted, based on international human rights standards.<sup>1</sup>

#### Importance of Peaceful Assembly

The right to freedom of peaceful assembly is recognised as one of the fundamental freedoms in all major international human rights treaties, including Article 20 the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights, and Article 11 of the European Convention on Human Rights (ECHR). The right to assemble includes the right to gather together in static assemblies, including public meetings, rallies and pickets, and in moving assemblies, including marches, parades and processions.

Freedom of peaceful assembly is recognised as one of the cornerstones of a democratic society, and the right to gather collectively in public spaces to express opinions, protest, commemorate and celebrate history and identity is acknowledged as an opportunity for minority and marginalised groups, and those without ready access to the mass media and the political establishment to make their voices heard, share their collective values with the wider society and even to challenge existing norms and standards.

As a fundamental feature of a democratic society, freedom of peaceful assembly creates both negative and positive obligations on those in authority, including national and local governments and the police:

- There is a negative obligation on the state not to interfere in the right to assembly where there is no pressing need to do so. This is evidenced in Scotland by the fact that the organisers of static assemblies are not required to provide any advance notification of their intentions to hold a static assembly; and
- There is a positive obligation on the state to facilitate and protect peaceful assemblies and enable them to proceed as the organisers intend.

These obligations place a responsibility on authorities to aim to ensure that a peaceful assembly is able to take place at the time, place and in the manner that the organiser wishes, and it is the responsibility of the state to take the necessary actions to minimise any disruption an assembly may, or may potentially cause, while facilitating that assembly.

As a fundamental freedom people gathering peacefully to express their views collectively have as much right to use public spaces for this purpose as do those who

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<sup>1</sup> For further details see [OSCE Venice Commission Guidelines on Freedom of Peaceful Assembly](#), third edition, 2020.

wish to use the space to, for example, drive motor vehicles, to shop, to trade, or to engage in business activities.

In exercising the right to peacefully assemble, the organisers and participants may cause some degree of disruption to daily routines. However, due to the essential nature of public assemblies in protecting freedom of expression, and the fact that any disruption caused will be temporary, authorities should seek to work around these to allow the procession to proceed as planned.

The right to peaceful assembly does not give those participating any right to threaten others, to provoke, incite or engage in acts of violence, or to use hate speech as part of an assembly. However, some assemblies by the nature of the issues they are addressing or views they are promoting, may be deemed to cause offence to some people, but as long as the assembly remains peaceful, and there is no incitement to hatred or violence, the assembly should be facilitated by the authorities. There is no right to not be offended and protests are often necessarily a means of highlighting minority views and radical ideas that may challenge existing norms and assumptions.

### **Scope for Restricting a Peaceful Assembly**

The right to peaceful assembly is an important right but it is not an unlimited right and it may be restricted in certain contexts. However, any restrictions must always be prescribed by law, considered necessary in a democratic society and be a proportionate response to an identified issue and the minimum level of restraint to achieve the required objective.

These principles of legality, necessity and proportionality mean that any blanket prohibition of all assemblies, or all assemblies of a specific type, is not possible. Additionally, a blanket prohibition on specific types of assembly at certain times, in certain places or in response to specific problems that may have arisen in the past will generally be considered to be disproportionate. Any restrictions that might be imposed on an assembly must be so done in response to a specific concern about a particular assembly and each must be assessed on an individual basis.

The European Convention on Human Rights sets out a number of grounds under which an assembly may be restricted by the authorities, these are:

- in 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.

Any legitimate restriction imposed on any assembly must be based on one or more of these grounds, but as noted above must also be lawful, necessary and proportionate.

### **Right to Peaceful Assembly in Scotland**

In Scotland the Civic Government (Scotland) Act 1982, (as amended) sets out the legal framework for local authorities to facilitate and enable public processions. Section 62 sets out the requirements of organisers to notify the relevant local authority of their intention to hold a public procession, while Section 63 outlines the powers and

responsibilities of a local authority. Section 63 (8) sets out the number of grounds under which a local authority may prohibit or impose restrictions on a public procession. These include the likely effect of the holding of the procession in relation to:

- public safety;
- public order;
- damage to property;
- disruption of the life of the community.

The law also allows a local authority to consider the extent to which a procession might place an excessive burden on the police; as well as whether the organisers or participants had been involved in previous processions in the areas that were in breach of prohibitions, of any restrictions or of a local authority code of conduct.

The grounds set out in the Scottish legislation broadly overlap with those identified in the European Convention on Human Rights, albeit they are more limited. There is no scope to consider the impact of a public procession on public health or morals, which have scarcely been considered in cases before the European Court on Human Rights (at least until the recent Covid pandemic) and the issue of national security is the responsibility of national not devolved or local government.

The Scottish legislation also includes the potential for damage to property which would be addressed as the prevention of disorder or crime under the European Convention on Human Rights, while the Scottish concept of ‘disruption to the life of the community’ would have to be interpreted within the European Convention on Human Rights formulation of ‘the protection of the rights and freedoms of others’.

The remainder of this paper reviews the legitimacy of any forms of restriction that might be imposed on the grounds of public safety, crime and disorder, and in relation to the rights and freedoms of others.

### **Public safety**

Public safety issues are not often invoked as a reason for banning or restricting an assembly. Public safety concerns may arise in contexts for example where vehicles are part of a procession; if fireworks or pyrotechnics are involved; or if the procession takes place after dark. Any such risks however must be of a serious or significant nature and not just be raised as a potential or possible risk or danger.

The United Nation General Comment 37<sup>2</sup>, paragraph 43 notes that: ‘For the protection of “public safety” to be invoked as a ground for restrictions on the right of peaceful assembly, it must be established that the assembly creates a real and significant risk to the safety of persons (to life or security of person) or a similar risk of serious damage to property.’

In instances where there is a risk to public safety, it is the primary responsibility of the state or relevant public authority to take appropriate or additional precautionary measures to limit any risks to the public, rather than imposing extensive restrictions

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<sup>2</sup> [United Nations General comment no. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#)

on the assembly itself. In some contexts it may be proportionate to require changes to a route of any march or procession, or to the timing of the assembly to address any safety concerns, but these must be justified by recourse to notions of legality, necessity and proportionality.

The primary responsibility for protecting public safety and security for an assembly always remains with the state. The public authorities thus have a positive obligation to provide adequately resourced policing arrangements. As part of this responsibility the public authority should also ensure there is appropriate access to medical facilities and other emergency services during an assembly.

Although the organisers may be expected or required to provide stewards to facilitate their assembly, the responsibility of the stewards is primarily to ensure the participants behave and proceed in a way that the organiser intends.

### **Prevention of Crime**

The European Court of Human Rights has noted that the European Convention on Human Rights “obliges State authorities to take reasonable steps ... to prevent criminal offences of which they had or ought to have had knowledge” however this “does not permit a state to protect individuals from criminal acts of a person by measures which are in breach of that person’s Convention rights”.

Preventive restrictions, in advance of any crime being committed, should only be taken in exceptional cases and where there is a clear and present danger that a crime will be committed. They should not be based exclusively on such factors as membership of an organisation, previous activities that the individual may have been involved in, or mere general suspicion that someone may commit an offence.

Furthermore, states must not criminalise the exercise of the right to peaceful assembly itself and criminal provisions should not be invoked as a pretext to restrict or prohibit an assembly with a view to preventing such crimes. This also applies to situations where assemblies were not duly notified, the European Court has emphasised that as long as an assembly remains peaceful it should be facilitated, while any failure to provide advance notification of other requirements may be addressed after the procession and through the prosecution of the organisers.

### **Protection of Public Order**

The notion of ‘public order’ is a somewhat vague term, but is generally understood to be wider than that of ‘prevention of disorder or crime.’ However, there is broad consensus that a hypothetical risk of public disorder, or the presence of a hostile audience or counter protesters, are not, by themselves, legitimate grounds for prohibiting a peaceful assembly, nor restricting the rights of opponents of the assembly.

All assemblies will involve some degree of disruption to routine activities in the public domain, and in some cases disruption and disorder may be a legitimate aim of the assembly, in order to challenge norms and make people think. As long as the assembly remains peaceful (in so much as it does not threaten others, incite acts of violence or use hate speech and so forth) such disruption should be tolerated, since

assemblies are always temporary and thus will have a limited impact on the rights of others.

The mere fact that the content or manner in which an assembly is conducted may annoy, offend, shock or disturb others, or that such assembly may cause some temporary disruptions of daily life, or affect the aesthetic appearance of a public space, does not by itself amount to a disruption of public order. For that reason, prior restrictions imposed due to the possibility of minor, isolated or sporadic incidents of disorder or even of violence are likely to be disproportionate.

The right to assemble in public is the right to assemble in a peaceful manner and there is no protected right to engage in acts of violence. However, it is also important to note that an assembly is always a gathering of diverse groups and individuals and even if some people behave aggressively or violently, this does not affect the rights of others to continue to assemble peacefully. The police must always aim to police an assembly in a way that protects the rights of those who are behaving in a peaceful manner.

### **Protection of the Rights and Freedoms of Others**

All assemblies will potentially, and often actually impact, on the rights and freedoms of those who live, work, shop, trade and carry on business in the same area. However, balancing the right to assemble and the rights of others should always aim at ensuring that assemblies are able to proceed in the manner in which the organiser desires, unless in doing so it would impose unnecessary and disproportionate burdens on others.

The United Nation General Comment 37, paragraph 47, notes that 'assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions must be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions'.

Some degree of disruption to the rights of others must be tolerated if the right to peacefully assemble is not to be deprived of any meaning. But the General Comment refers to 'disproportionate' disruption which is a relatively high bar and beyond the level of disruption to daily routines that most assemblies or processions will cause. The temporary disruption or rerouting of vehicular or pedestrian traffic, nor disruption to business activities, nor public opposition to an assembly should be considered legitimate reasons to ban or impose significant restrictions on an assembly.

Nevertheless, there may be some rationale for distinguishing between assemblies that take place in central areas of a town or city, or that process along main thoroughfares, where the scope for restrictions will always be limited, and assemblies that take place in residential areas, where greater concerns for privacy or the right to enjoy family life may be necessarily invoked.

Similarly, assemblies that may potentially disrupt public services, such as education or health, due to their presence outside a school or hospital, particularly if the assembly is not focused on rights to health or education, may also be subject to legitimate restrictions.

However, in all such cases the focus should be on imposing appropriate and proportionate restrictions, such as to limit noise, restricting assemblies after dark, ensuring ease of access to the facilities rather than imposing a complete or blanket ban on an assembly. As noted earlier blanket bans on assemblies in specific locations are likely to be considered disproportionate.

If an assembly is restricted for the purpose of protecting the rights and freedoms of others, the relevant local 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.

However, also note that the authorities may be allowed some degree of flexibility in their decision making (a 'margin of appreciation') when assessing these issues, as long as they are acting in good faith and following the principles of legality, necessity and proportionality.

### **Other Grounds for Restricting an Assembly in Scots Law**

As noted above, under international human rights standards the public authorities have a responsibility to protect and enable an assembly to take place. The European Convention on Human Rights does not provide for the concept of an assembly imposing an 'excessive burden' on the police as a legitimate ground for restricting an assembly, since it is a fundamental obligation of the state to enable rights to be exercised. There may be circumstances where it is possible to argue that the burden on the police is excessive, but this would be a high threshold and would be unlikely to be reached except in exceptional circumstances.

Scots law also allows a local authority to take into consideration whether the organisers or participants had been involved in previous processions in the areas that were in breach of prohibitions, of any restrictions or of a local authority code of conduct. It may be appropriate to consider the actions and behaviours of the organisers in relation to past processions and to press on them the importance of future compliance with any restrictions, but sanctions should be imposed immediately after an assembly, rather than at some time in the future.

It is however, not appropriate to hold the organisers liable for the actions of any participants in a previous assembly, unless the organisers actively encouraged the unlawful or otherwise behaviour. Individuals are responsible for their own actions, but should not be held liable for the actions of others.

The OSCE / Venice Commission *Guidelines on Freedom of Peaceful Assembly* noted, at paragraph 197, that the 'organisers and stewards have a responsibility to make reasonable efforts to comply with the legal requirements and to ensure their assemblies are peaceful, but they should not be held liable for failure to perform their

responsibilities if they made reasonable efforts to do so'.<sup>3</sup> As noted above, the police are responsible for maintaining law and order and for responding to crime, not the organiser of an assembly.

The intimidating character of an assembly may be taken into account by the authorities if the repeated organisation of assemblies was considered capable of intimidating others and therefore of affecting their rights, especially in view of their location. However, there is no right not to be offended and therefore opposition to an otherwise peaceful assembly because of a dislike for the organising body or the message being conveyed by the assembly should not be considered as legitimate grounds for banning or restricting the assembly in some way.

Assemblies should not be aimed at the destruction of the rights of others. International standards set limits on the exercise of the right to freedom of peaceful assembly when it is aimed at the destruction of other rights and freedoms as set out in Article 17 of the European Convention on Human Rights. This means, for example, that counter-demonstrations organised with the purpose of physically disrupting or preventing another peaceful assembly are not permissible. As this intention may be very difficult to detect ahead of an assembly, it may be possible for the authorities to prohibit an assembly when, based on previous experiences, there appears a serious risk that it may aim to disrupt or prevent another peaceful assembly.

### **Cumulative Impact of Processions in a Locality**

The report of the Short Life Working Group on Processions in Scotland raised the issue of the potential cumulative impact of a number of processions in a locality as an issue that may legitimately be considered in some contexts:<sup>4</sup>

The Working Group is of the view that the cumulative impact of processions on the rights of others in a particular locality is one of a number of factors that may legitimately be taken into account in assessing the impact of a procession on the rights and freedoms of others so long as it is not accorded undue significance, and even if the processions in question are organised by different bodies and/or have different participants. We make this point because the impact on the rights of others occurs irrespective of who is organising or participating in the processions. As such, the State's positive obligation to protect these other rights and freedoms arises independently of who is organising or participating in each procession (para 7.8).

While it may be possible to look at the impact of a number of processions in any specific locality as one factor when considering the imposition of restrictions or a ban on a procession, the arguments would have to reach a high threshold to ensure any restrictions were legitimate, necessary and proportionate. The following outlines some

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<sup>3</sup> See [OSCE / Venice Commission Guidelines on Freedom of Peaceful Assembly](#) second edition, 2010.

<sup>4</sup> <https://www.gov.scot/publications/report-short-life-working-group-facilitating-peaceful-assemblies-scotland/>

of the issues that would have to be considered when reflecting on the cumulative impact of public processions in any given locality.

1. **Cumulative Impact:** The report is not clear what the working group thought might be a threshold for consideration of a cumulative impact. In particular, how many processions and over what period of time would be included in the numbers being viewed as acceptable? There could be a value in preparing some form of guidance in relation to the number of processions over a fixed period of time that could be used by councils when the issue of cumulative impact might be a legitimate consideration.
2. **Issue of Concern:** It would be important to clarify that the issue of concern was simply the number of processions taking place rather than factors relating to the number of people attending or supporting the procession, the behaviour of participants and spectators, the messages being communicated, or other factors such as noise or timing, and which might be addressed through discussion between the authorities and the specific organisers. Any decision would also have to take into consideration the scale of any opposition to any procession, as opposed to those who supported the procession or expressed no opposition. However, if people are exercising their right to assemble in a peaceful manner, then as noted above, the scope for restriction would always be limited and the right should be facilitated by the authorities.
3. **Locality:** The report suggests the issue relates to the number of processions held in a locality, but it is not clear what might be meant by the term 'locality'. There would need to be some understanding of the nature and size of the area that was being considered and this would have to be quite specific, it could not be a town centre or other main urban area as this would have the potential to lead to a blanket restriction on processions and the report is clear that is not about potential quotas for processions (paragraph 7.9).

Given the right to peaceful assembly is a fundamental freedom there is limited scope for restricting assemblies on major thoroughfares or central urban areas, and even if processions are frequent, they are always of a temporary nature and short live.

There may however be some scope for considering the cumulative impact of public processions in a residential area, and which might be seen as having a negative impact on the rights to privacy; peaceful enjoyment of one's possessions and property; and freedom of movement.<sup>5</sup> However, in all contexts some degree of disruption to daily routines must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning.

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<sup>5</sup> [OSCE Venice Commission Guidelines on Freedom of Peaceful Assembly](#), third edition, 2020, paragraph 143.



4. **Organisers v Numbers:** The report suggests that a decision could be based on the gross number of processions rather than processions by any single organiser or organising body. But this could mean that an individual or organiser was prevented from exercising their rights simply because someone else had exercised their rights on a previous occasion. Such a restriction could appear to be discriminatory. Furthermore, the European Court has always argued that each assembly should be considered on its own merits rather than as one of a number of processions.

Any decision that focused on the negative cumulative impact of public processions on a locality would have to be very clearly thought through before imposing restrictions on any such assembly. There is a risk that ‘cumulative impact’ restrictions on a public procession in a specified area would be regarded as little more than a means to limit or ban certain types of assembly rather than as a legitimate and proportionate restraint.

## ANNEX B

### Outline Guidance on Notification Requirements, International Human Rights Standards and Current Practices in Scotland

Under the current relevant legislation, Section 62 of the Civic Government (Scotland) Act 1982 (as amended), the organisers of a public procession are required to provide 28 days advance notification to the local authority in whose area it is taking place (and to all such local authorities if the procession includes more than one) and also to the police (chief constable).

The legislation also requires the organiser to provide a number of pieces of information as part of the notification and which are listed as: (1) the date and time when the procession is to be held; (2) its route; (3) the number of persons likely to take part in it; (4) the arrangements for its control being made by the person proposing to hold it; and (5) the name and address of that person.

The legislation also specifies that the local authority may, after consultation with the chief constable, accept a notification that does not comply with the 28 day notification period if the organiser so requests and that person 'set(s) out the reason why notice of the proposal was not given in accordance with'.

Funeral processions, which are organised by a 'funeral director acting in the ordinary course of his business'; and processions which are 'specified in, or is within a description specified in, an order made by the Scottish Ministers' are excluded from the requirement to provide advance notice.

Each of the local authorities in Scotland provides information on how organisers should provide notification of a planned procession on their website. However, different councils utilise different language in relation to the notification process; provide different levels of guidance or information to organisers; require different levels of information from organisers; and in a number of cases may require additional information in the form of a risk assessment to be undertaken and provided by the organisers.

This short paper outlines how the requirement to provide advance notification of an intended procession (or any other form of public assembly) may be understood in terms of international human rights standards. It draws on two main sources of authority (1) *United Nations General Comment 37 (2020) on the right of peaceful assembly (article 21)*<sup>6</sup> and (2) the OSCE/ODIHR and Venice Commission *Guidelines on Freedom of Peaceful Assembly* (third edition, 2020),<sup>7</sup> this latter document in turns draws heavily of the European Convention on Human Rights as interpreted through the jurisprudence of the European Court of Human Rights.

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<sup>6</sup> Available at <https://digitallibrary.un.org/record/3884725?ln=en> see para 70-73

<sup>7</sup> Available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e) see paras 112-124

## **International Human Rights Standards relating to Advance Notification**

**Legitimacy of Advance Notification:** International human rights standards do not require the advance notification of any procession or assembly. Some countries require no advance notification for any assembly, while others exclude certain types of assembly from the requirement. In Scotland, for example, the organisers of static assemblies and funeral processions are not required to provide advanced notice.

However, it is accepted that there may be legitimate reasons for requiring advance notification of certain types of assembly, dependent on such factors as their size, nature and location. In such a situation the aim of the notification requirements should be to enable the authorities to put in place the necessary arrangements to facilitate the procession, as well as to protect public order, public safety and the rights and freedoms of others.

Under such circumstances a notification requirement is considered to be compatible with the permissible limitations laid down in Article 11 of the European Convention on Human Rights and Article 21 of the International Covenant on Civil and Political Rights. However, on some council websites the rationale for the notification process is framed in terms advising / warning the public of such processions rather than on enabling the council to better facilitate a fundamental human right.

**Notification as a Restriction:** A requirement on an organiser to provide advance notice is acknowledged as a *de facto* interference with the right to freedom of assembly. But such a restriction is considered acceptable as long as the aim is to better able the authorities to facilitate and enable the right to assemble to be exercised. However, any form of restriction on a fundamental human right must always be prescribed by law, necessary and proportionate. In this context being 'necessary' means it is required to enable the authorities to meet their positive obligations to protect human rights, while 'proportionate' means imposing the least possible restrictions to address any issues of concern.

**Notification, Authorisation, Permission:** Scottish legislation uses the term 'notification' and makes no reference to any form of authorisation process or request for permission. However, websites of different Scottish councils use a number of different terms in relation to providing information in advance of a public procession. Some correctly use 'notification', while others use 'authorisation', 'permission' or refer to 'licensing'. These different terms have different meanings and while the term notification is interpreted as the organiser informing the authorities of their intentions, the other terms convey notions of seeking approval from the local authorities to be able to exercise ones rights.

In some cases the council websites state explicitly that the process is about seeking permission for a procession. Although international human rights standards have deemed that an authorisation process may be acceptable on the presumption that all such applications will be approved and permits issued, a notification regime is the preferred approach.

**Ease of Notification Procedure:** International standards state that advance notification procedures should be clear and simple to follow for everyone and that

submitting a notification should be possible by a variety of means (e.g. in person, by post, electronically). In Scotland all local authorities accept notification electronically and have information and forms available on their websites. However, not all such material is always readily accessible or easily found on the relevant websites.

**Scope of Information Required:** The procedure for providing advance notification to the public authorities should not be onerous or overly bureaucratic. In particular the information that is required should be kept to the minimum that is relevant to the aims of the notification process. The Scottish legislation is quite specific on the information that is required of the organiser and which is limited to the date and time of the procession; its route; the number of persons likely to take part; the arrangements for its control being made by the person proposing to hold it; and the name and address of that person. These all seem to be proportionate to the aims of the notification process and in line with international standards.

Scottish legislation does not make any reference to additional information that may be requested but nor does it appear to preclude requesting further information. Scottish Government guidance does encourage local authorities to hold precursory meetings as part of the process of facilitating public processions, at which further information may be sought.<sup>8</sup> Such meetings are recognised as good practice under international human rights standards, but participation should remain voluntary for the organisers of processions.

However, in a number of cases Scottish local authorities require much more extensive information from an organiser than that specified in the legislation and which may be considered to be disproportionate and excessive. For example, the OSCE/Venice Commission *Guidelines* state that 'A notification procedure may also be considered unduly bureaucratic if (the notification requires) ... more than one organiser by name, the submission of identification details of others involved in the event, or the exact or predicted number of participants.'

**Risk Assessment:** Many local authorities require the organiser of a public procession to provide a risk assessment as part of the notification process and provide a relevant form for the organisers to complete, which appears to be based on a template included in the Scottish Government guidance document. While there is no legal requirement on organisers to complete and submit a risk assessment form, it may be reasonable to require organisers to do so, at least in some contexts. However, the risk assessment process should focus on the responsibilities of the organiser rather than on the wider management of risks to public order.

Although it is also considered good practice under international human rights standards for organisers to provide stewards to help marshal their procession, this is accepted as a voluntary process rather than a legal requirement. Stewards should always be deployed to help the organisers achieve their aims rather than for wider public order purposes. It remains the responsibility of the police and the public authorities to manage public order and any potential impact that might result from an assembly.

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<sup>8</sup> Available at <https://www.gov.scot/publications/review-marches-parades-scotland-guidance-scottish-local-authorities/pages/2/>

Local authorities should be encouraged to review their risk assessment forms and procedures to ensure that they do not impose disproportionate requirements on procession organisers and thus potentially dissuade some people from organising procession.

**Timeframe for Notification:** International standards state that the required period of notice before an assembly should not be 'excessively long' and generally not more than a few days before the planned procession. The Scottish 28 day notification requirement (which is based on the approach in Northern Ireland) is an outlier and at the extreme end of required advance notification and should be more than adequate to ensure that relevant authorities have time to plan and prepare for the procession.

Given the length of advance notification it should be reasonable and proportionate for local authorities in Scotland to be flexible wherever possible in relation to any late notification of a planned procession.

**Late Notification:** The Scottish legislation simply states that a local authority should consider a late notification as long as the organiser provides a reason for the lateness and after consultation with the chief constable. However, in some cases the council websites state that late notifications will only be accepted in 'exceptional circumstances'. This requirement for exceptional circumstances is not included in the legislation, but is set out in paragraph 18 of the Scottish Government guidance. Notwithstanding the guidance, councils should be encouraged to facilitate all notifications as far as possible.

**Negative Impacts of Notification:** As has been noted, any notification requirement is recognised as an interference with the right to freedom of peaceful assembly, and any process that imposes excessive or disproportionate requirements as part of the notification process may serve to discourage some potential organisers and could thus effectively serve to undermine people from exercising the right to freedom of peaceful assembly.

The requirement of advanced notification should not be used as a 'hidden obstacle' to limit people's right to assemble and thus enforcement of the rules on advance notification should not become an end in itself. This means that failure to notify in accordance with the legal requirements should not render the assembly unlawful and must not by itself lead to restrictions on participants or dissolution of a peaceful assembly.

It should however be noted that late notification makes effective engagement with the organiser more challenging and may limit the ability to local authorities to make the wider public aware of potential disruption and measures taken to contain that disruption.

**Acknowledging Receipt of Notification:** Although not required under Scottish law, international standards note that it is good practice for the authorities to formally acknowledge receipt of the notification to the organiser. If additional information is required from the organiser, this should not be considered as a new notification, but rather part of the original notification submission.

**Meetings between Organisers and Local Authorities:** Dialogue between the organisers of a procession and the local authority may be useful to ensure the smooth conduct of the assembly. But participation in discussions or negotiations on the part of the organisers should always be voluntary. A refusal by organisers to engage in dialogue with the authorities should not mean automatic prohibition of the procession, however a lack of dialogue may make it more difficult for the authorities to have due regard for considerations of public order and public safety.

**In Conclusion:** The legal requirements under Scottish law for advance notification of a public procession fall broadly within the parameters of international human rights standards, notwithstanding the long notification period. However, the practice of some local authorities, as evidenced by the relevant sections of their websites, appears to take a somewhat different approach and adopt a harder and stricter approach to notification, one that is more akin to an authorisation model. In some cases they also impose disproportionate requirements on the organisers, which may have the effect of deterring people from exercising their rights. In contrast, there are few, if any, examples of local authorities using their websites of notification process to highlight that notification has been designed to enable them to put in place the services and resources that will facilitate and enable public processions and thereby to protect the right to peaceful assembly.