
Report To:	General Purposes Board	Date:	8 February 2023
Report By:	Head of Legal and Democratic Services	Report No:	LS/016/23
Contact Officer:	Emma Peacock	Contact No:	01475 712115
Subject:	Report by the Independent Working Group on Public Processions in Scotland		

1.0 PURPOSE AND SUMMARY

- 1.1 For Decision For Information/Noting
- 1.2 The purpose of this report is to ask Members of the General Purposes Board to note the findings of the report dated November 2022 produced by the Short Life Working Group on Processions in Scotland.
- 1.3 The Scottish Government set up an Independent Short Life Working Group in September 2021 to identify challenges involved in the facilitation and regulation of processions, along with the procession notification process in Scotland. The Short Life Working Group also specifically looked at the Northern Ireland Parades Commission to determine if there were any aspects of this model which could be adapted in Scotland. On 2 November 2022 the Working Group published their report which contained their findings.

2.0 RECOMMENDATIONS

It is recommended that the Board:

- 2.1 Note the contents and outcome of the Report by the Short Life Independent Working Group on public processions in Scotland as summarised in paragraphs 3.5, 3.6 and 3.7 of this report.

Iain Strachan
Head of Legal & Property Services

3.0 BACKGROUND AND CONTEXT

- 3.1 In September 2021 the Scottish Government established an Independent Short Life Working Group which was tasked with identifying the challenges involved in the facilitation and regulation of processions in Scotland, including those relating to the notification of public processions and notification procedures.
- 3.2 By way of local context, in 2022 there were 23 such processions in the Inverclyde Council area. However, it is important to note, and the Short Life Working Group was likewise clear on this, that the current system for the regulation of processions is one that is based around notification of proposed processions. The current system is not one in which the Council grants licences, or similar such approvals, for processions to be undertaken. A key difference with a notification framework, such as this, is that there is a presumption that the organiser of the procession can proceed, unless and until the relevant public body intervenes.
- 3.3 A human rights based approach was central to the work of the Short Life Working Group and they sought to identify processes which balanced the rights of organisers/participants and the rights of non-participants and communities impacted by the processions. In carrying out this task, the Short Life Working Group looked specifically at how the Northern Ireland Parades Commission works and whether there was any learning which could be extracted from this model and adapted for Scotland.
- 3.4 The Short Life Working Group published a Report on their findings on 2 November 2022. A copy of this report is attached as Appendix 1.
- 3.5 The report of 2 November 2022 sets out 18 findings, however does not recommend an overhaul of the current regulatory regime for public processions in Scotland, nor does it recommend the establishment of a Parades Commission in Scotland, similar to Northern Ireland. Instead, the report makes suggestions in relation to matters designed to improve public understanding of the procession notification process and to provide greater opportunity for community involvement.
- 3.6 The report also makes suggestions which focus on local authorities taking a human rights based approach to the balancing of rights of organisers/ the community i.e. suggesting that further consideration may be given to what constitutes a “disruption of the life of the community” in relation to public processions. There are suggestions in relation to extending the capacity of local authorities to collect evidence, engage with interested parties and to facilitate mediation and negotiation surrounding public processions, in order to reduce conflict in the community. The report underlines the importance of the procession notification process being a simple process and also of the local authority ensuring that information about processions is accessible on the local authority’s website. Inverclyde Council publishes details of public processions taking place in the Inverclyde area at the following link <https://www.inverclyde.gov.uk/law-and-licensing/licensing/taxi-and-civic-licensing/civic-licensing/public-procession> . Further suggestions include that consideration could be given to local authorities imposing conditions on related counter-protests and in creating a higher statutory threshold for prohibiting processions. The report also contains suggestions in relation to the Committee decision making process for contentious processions and its composition, for example that they could also include non-elected members.
- 3.7 The report concludes that a “one size fits all” model for dealing with public processions should not be applied across all local authorities in Scotland. It is suggested that a number of the points made could be taken forward by Glasgow City Council in the first instance as a pilot, with a review process undertaken in 3 to 5 years. If the review deems the changes successful, a new model could then be looked at by other local authorities. The Scottish Government has not produced a formal response to the report but has instead indicated that they will work with local authorities

and Police Scotland to give full consideration to the conclusions and recommendations set out in the report.

3.8 An update will be given to the Board as necessary, should there be any recommendations made in future that the public procession process in Inverclyde should be reviewed.

4.0 PROPOSALS

4.1 It is recommended that the Board note the contents of this report.

5.0 IMPLICATIONS

5.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

SUBJECT	YES	NO	N/A
Financial		X	
Legal/Risk		X	
Human Resources			X
Strategic (LOIP/Corporate Plan)			X
Equalities & Fairer Scotland Duty			X
Children & Young People’s Rights & Wellbeing			X
Environmental & Sustainability			X
Data Protection			X

5.2 Finance

There are no financial implications associated with this Report.

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (if Applicable)	Other Comments
N/A					

5.3 Legal/Risk

There are no Legal/Risk implications associated with this Report.

5.4 Human Resources

There are no Human Resources implications associated with this Report.

5.5 **Strategic**

There are no Strategic implications associated with this Report.


6.0 **CONSULTATION**

6.1 None

7.0 **BACKGROUND PAPERS**

7.1 None

Report of the Short Life Working Group on Processions in Scotland



Report of the Short Life Working Group on Facilitating Peaceful Assemblies in Scotland

Published November 2022

Dominic Bryan, Queens University Belfast
Lorraine Gillies, Scottish Community Safety Network
Graham Boyack, Scottish Mediation
Michael Hamilton, University of East Anglia

Contents

Summary	3
1. Introduction	7
2. Notification procedures	10
3. Publication of details.....	18
4. Collecting evidence: interested parties and the potential role of case workers.....	19
5. Decision making in relation to ‘contested’ or ‘sensitive’ parades.....	27
6. Status of evidence (confidentiality and transparency).....	34
7. Interpreting the statutory criteria	37
8. Encouraging dialogue and enhancing mediation capacity	43
9. Political parties and a civic model?	45
10. Road closures and ‘TTROs’	50
11. Strategic development, best practice and long-term institutional knowledge.....	53
12. Police resources and community ‘policing’	54
13. ‘One size fits all’?	57
TERMS OF REFERENCE	59
MEETINGS	61
APPENDIX 1	65
APPENDIX 2	66
APPENDIX 3	67
APPENDIX 4	68

Summary

The Working Group was tasked with identifying challenges involved in the facilitation and regulation of processions, including those relating to the notification process, in Scotland. A human rights-based approach has been central to our work in seeking to identify processes capable of achieving an appropriate balance between the rights of organisers/participants and the rights of non-participants and communities impacted by these events. We were specifically asked to look at how the Northern Ireland Parades Commission works and whether there was any learning that could be extracted from this model and adapted for Scotland.

1. There is no present need for a Parades Commission in Scotland. Rather, the Working Group suggests several measures appropriate to particular areas of Scotland where specific challenges have arisen in relation to processions and related protests. **(Sections 1.10 – 1.11)**
2. 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.
3. These processes, at their core, are premised on a system of notification and this is fundamentally different from – and creates different public expectations than – a licensing framework. The presumption in a notification framework is that the organiser of an assembly can proceed unless and until the relevant authority intervenes. **(Section 2)**
4. We underline the importance of having a simple process for notification and suggest that section 62(1)(b) Civic Government (Scotland) Act 1982 be repealed to remove the defunct requirement for organisers to submit notification to the chief constable. **(Sections 2.6 – 2.7).**
5. We were not convinced that there is either need or merit in introducing in Scotland a 14-day notification requirement for parade-related protests (as exists in Northern Ireland). **(Section 2.9)**
6. We underscore the importance of ensuring that relevant information about processions is accessible on Local Authority web sites. **(Section 3.3)**

7. We note the vital importance of interagency working and bringing together interested parties through structures such as the Event Planning and Operations Group (EPOG) in the City of Edinburgh and the Safety Advisory Group (SAG) process as used by (amongst others) Scottish Borders Council. **(Sections 4.13 – 4.15, 4.20)**
8. We were also 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 we suggest that a process of information sharing and establishing good practice is developed. Data concerning previous parades and their regulation across Scotland should be collected into a significant body of knowledge. We suggest that COSLA or another appropriate body undertake this work. **(Sections 4.19, 11.2 – 11.4)**
9. The Working Group believes that the initial step in considering whether or not restrictions on a procession might be justified should be whether a procession raises rights-based concerns. **(Sections 5.12, 7.7)**
10. Further consideration might be given to the question of whether Local Authorities should be empowered to impose conditions on related counter-protests and/or on the supporters of processions. The Working Group can see some merit in having the *same* regulatory body take such decisions (rather than having some decisions being taken by Local Authorities and other decisions concerning related events being taken by Police Scotland). **(Sections 5.14 – 5.18)**
11. There may be some advantage in locating the power to prohibit public processions outside of Local Authorities, and in creating a higher statutory threshold for prohibition than exists for imposing conditions. **(Sections 5.19 – 5.20)**
12. We support the importance of transparency in the process but suggest 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. **(Section 6)**
13. Further consideration should be given to the factors relevant to the interpretation of the ‘disruption of the life of the community’ criterion (in section 63(8)(a)(iv), *Civic Government (Scotland) Act 1982*). In making this recommendation, we recognise that different rights of different individuals and groups are potentially engaged – the rights of those seeking to parade and the rights of those who experience parades. We observe that the relevant authorities have positive obligations to uphold these different rights

and must separately assess the proportionality of any interference with these different rights. In making such assessments, different material considerations may arise in respect of different rights. 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. Emphatically, however, this is not to suggest that blanket restrictions (such as a quota on processions in a particular locality) can be imposed and it does not in any way diminish the importance of considering each notification on its own terms. **(Sections 7.8 – 7.9)**

14. Drawing on the example of Northern Ireland, the working group also considers that public processions and related open-air public meetings could be expressly exempted from the category of 'special events' to which Temporary Traffic Regulation Orders (TTROs) pertain. **(Section 10)**
15. We would suggest that extending the capacity of some Local Authorities (Glasgow in particular) to collect evidence, engage with interested parties, develop case studies and potentially facilitate negotiation and mediation may have a long-term impact in reducing conflict. There is the potential to constitute the Processions Committee in Glasgow in a different way by appointing and involving independent civic actors and by rethinking the core functions that such committees within Local Authorities might best serve. **(Sections 1.11, 4.21, 9.10-9.11 and 13.2)**
16. The working group believes that an important part of improving relationships around processions and related protests is to develop significant capacity for mediative practice outside the Local Authority which could be engaged in processes throughout the year. **(Section 8)**
17. The working group has concluded that there are a number of ways in which communities, relevant groups and civic authorities can be resourced in order to reduce the need for public order policing. These might include: training for stewards; the

resourcing of organisations to undertake steward training; funding for organisations to develop skills including in communication and engagement; the development of mediation practice across society; the involvement of citizens in decision-making and event facilitation; training in human rights and policing; support for political activism. Such funding offers a community policing alternative to the deployment of public order resources and thus potentially saves money. Moreover, it also underpins the State's commitment to protecting the right of peaceful assembly and other rights and freedoms. **(Section 12.7)**

18. The Working Group has suggested a range of measures that could be acted upon in areas where they are most needed. As such, we have avoided suggesting a 'one size fits all' approach but have instead suggested increasing capacity in particular areas to address particular issues. So, for example, it could be that Glasgow City Council could work on some of these changes with the possibility of a review process after 3 or 5 years. If the review deems the changes successful, the model could then be looked at by other Local Authorities as required. **(Section 13.2)**

1. Introduction

- 1.1 The Working Group was tasked with identifying the challenges involved in the facilitation and regulation of processions, including those relating to the notification process, in Scotland. A human rights-based approach has been central to our work in seeking to identify processes capable of achieving an appropriate balance between the rights of organisers/participants and the rights of non-participants and communities impacted by these events. In considering how these challenges could be addressed, and the practical implications of making any changes, we were specifically asked to look at how the NI Parades Commission works and whether there was any learning that could be extracted from this model and adapted for Scotland. This report uses the comparison between Northern Ireland and Scotland as a basis to discuss how well the legislative framework and related processes are working in Scotland.**
- 1.2 It is worth noting that within the United Kingdom there are three different legal frameworks governing the regulation of public processions and other assemblies: Scotland, where the Local Authority receives notifications of processions and is the central decision-making body; Northern Ireland, where the independent Parades Commission makes decisions; and England and Wales, where the police are the central decision-making body in relation to notifiable processions and other assemblies. This regional diversity offers the possibility of informative comparison.**
- 1.3 In this report, we wanted to draw a number of comparisons between Northern Ireland and Scotland regarding the facilitation and regulation of public processions. We have had to work within a short timeframe. As such, further work would be beneficial in order to obtain a more detailed analysis of the practical operation of both legal regimes and to build upon the actual experiences of the first full summer of marches since moving out of Covid restrictions. We believe there would be value in using this report as the basis for convening further discussions with all interested parties.**

- 1.4 We also think it is important to acknowledge the very significant amount of work on parading that has been undertaken in Scotland since *The Orr Review of Marches and Parades in Scotland* (2005) and in Northern Ireland since *The Report of the Independent Review of Parades and Marches* (1996). Indeed, the repeated examination of the way parades and protests are facilitated and regulated in both jurisdictions underlines the importance of protecting rights in democratic societies. We would particularly like to acknowledge the work that Dr Michael Rosie has undertaken in Scotland and we have provided a list of relevant studies in Appendix 1 that we have drawn upon for background information.
- 1.5 The legislation and institutional structures that govern the exercise of the right of peaceful assembly as it relates to processions in Northern Ireland and Scotland share a number of aspects in common (such as a 28-day notification period for processions). There are also a number of key differences, perhaps the most significant of which is that in Northern Ireland the power to regulate both processions and related protest meetings lies with an independent civic body, the NI Parades Commission. The members of this adjudicatory body (a Chairperson and up to six Commissioners) are appointed by the Secretary of State for Northern Ireland following a public recruitment process (the positions are advertised), with a view to ensuring as far as is practicable that the Commission as a whole is representative of the community in Northern Ireland.¹ In Scotland, the power to impose conditions lies with Local Authorities and ultimately, decisions can be made by elected councillors that form a panel or committee when required. So unlike England and Wales, where the power to impose conditions on processions lies with the police, in Scotland and Northern Ireland the police provide evidence to inform decision-making by others.
- 1.6 While recognising that their legitimacy is often disputed, it is notable that the regulatory models in Northern Ireland and Scotland seek to draw their legitimacy from different sources – the legitimacy of the NI Parades Commission is based on its

¹ [Para 2\(3\), Schedule 1](#), Public Processions (NI) Act 1998.

independence from political institutions and is strengthened by the involvement of civic actors whereas in Scotland, legitimacy derives from the democratically elected Local Authority in which the procession takes place.

- 1.7 There are also some differences in the statutory criteria upon which conditions may be imposed on processions and other assemblies.² However, the Human Rights Act 1998 extends to Scotland, Northern Ireland and England and Wales, so these criteria must be interpreted in a way that is compatible with the rights in the European Convention on Human Rights (ECHR).
- 1.8 In the comparative discussion that follows, we identify similarities and differences between the models in Scotland and Northern Ireland, as well as a number of challenges that have arisen. We also offer some thoughts and conclusions as to how the processes in Scotland might potentially be improved. In Appendices 2 and 3, we provide diagrams that we hope might help explain the operation of the systems in Scotland and Northern Ireland.
- 1.9 Many of the problems in Scotland that were raised with us cannot straightforwardly be attributed to the provisions of the *Civic Government (Scotland) Act* 1982 itself – though we note that the primary focus of this legislative framework nonetheless contributes to a public perception that processions are *licensed* by Local Authorities. Many of the problems that we encountered instead concern practices of inter-agency working that have become established over time.
- 1.10 **As such, our proposals do not suggest a fundamental overhaul of the regulatory model in Scotland. In particular, while we have found there to be many fruitful comparisons between the regulatory processes in Northern Ireland and Scotland, we have not heard evidence that would justify the transplantation of the NI**

² In Scotland: [Section 63\(8\)](#), Civic Government (Scotland) Act 1982 (as inserted by [section 71](#), Police, Public Order and Criminal Justice (Scotland) Act 2006); In Northern Ireland: [Section 8\(6\)](#) and [section 9A\(6\)](#), Public Processions (NI) Act 1998 in relation to public processions and related protest meetings, and [article 4\(2\)](#) Public Order (NI) Order 1987 in relation to other open-air public meetings; in England and Wales: [sections 12\(1\) and 14\(1\)](#) Public Order Act 1986.

Parades Commission model to Scotland. While some of our conclusions might suggest that there could be value in giving further consideration to possible amendments to primary legislation, these are broadly limited to (a) the requirement to notify the Chief Constable,³ (b) whether the relevant authority should be empowered to impose conditions on related protest meetings and on supporters of processions,⁴ and (c) the power and criteria in relation to the prohibition of processions.⁵

1.11 **In some Local Authority areas of Scotland, such as in Glasgow, there are significant pressures on the Local Authority in dealing with processions. In this regard, the comparison with Northern Ireland proves useful because it serves to highlight particular aspects of the notification and adjudication processes. In this document, drawing relevant comparisons with Northern Ireland, we thus highlight a number of focused areas that might improve the way in which processions are governed in particular areas of Scotland. In our short review, we have concluded that the changes required primarily involve improved capacity, a shifting of resources, and better processes. We believe such changes can be implemented within existing frameworks.**

2. Notification procedures

2.1 ***Reframing the licensing mentality:*** We were struck by the fact that the regulation of processions in Scotland is situated within a licensing paradigm. This has implications for the way in which the notification process is perceived and understood.⁶ **In particular, a licensing framework sustains a misguided view that local councils can**

³ [Section 62\(1\)\(b\)](#) Civic Government (Scotland) Act 1982.

⁴ Sections 8(1) and 9A of the [Public Processions \(NI\) Act 1998](#) as amended by [the Public Processions \(Amendment\) \(Northern Ireland\) Order 2005](#).

⁵ [Sections 63\(1\)\(i\), 63\(5\)\(b\) and 63\(8\)](#) Civic Government (Scotland) Act 1982.

⁶ See e.g. Rosie (2016), para 2.26. This licensing mindset is reinforced by the language sometimes used to describe the process (e.g. 'application', 'license', 'permit') and by the fact that the regulatory powers are exercised by council licensing teams / licensing boards. See, for example, [Dundee](#); [East Ayrshire](#).

straightforwardly deny parade ‘applications’ and diminishes the weight properly afforded to the right of *peaceful* assembly.

- 2.2 Notification requirements are generally regarded as enabling the authorities to co-ordinate competing uses of the same space at the same time. They are a tool that can aid efficiency in the use of stretched policing resources – to borrow the words of one US judge, by helping eliminate ‘resource-depleting guessing games’.⁷
- 2.3 **However, it is important to emphasise that a mandatory ‘notification’ requirement is fundamentally different from an ‘authorisation’ procedure. The presumption in a notification framework is that the organiser of an assembly can proceed unless and until the relevant authority intervenes. In contrast, no such presumption exists under an authorisation, licensing or permit procedure. Under the latter system, the organiser of an assembly must instead wait for positive affirmation (by way of permission, approval of an application or the granting of a license or permit) before assuming that a procession may proceed.**⁸
- 2.4 **Both the European Court of Human Rights and the UN Human Rights Committee have said that a notification requirement can be justified only insofar as its purpose is to enable the better facilitation of the right of peaceful assembly. As such, the enforcement of a notification requirement cannot be regarded as an end in itself.**⁹
- 2.5 We note the observations made by Michael Rosie that a licensing mentality is ‘strongly implicit on a number of local authority websites.’¹⁰ **Likewise, in our view,**

⁷ *Five Borough Bicycle Club v City of New York*, 684 F. Supp. 2d 423 2010.

⁸ See further, for example, Hamilton, M., ‘[Towards General Comment 37 on Article 21 ICCPR: The Right of Peaceful Assembly](#)’ (ECNL: 2020) pp.24-27.

⁹ For example, UN Human Rights Committee, [General Comment No.37, para 70](#); [Novikova and Others v Russia](#), Applications Nos 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13, judgment of 26 April 2016, para 163; [Navalnyy v Russia](#), Application Nos 29580/12, 36847/12 and 11252/13, judgment of 15 November 2018, para 100; [Obote v Russia](#), Application No 58954/09, judgment of 19 November 2019, paras 41-43; [Barseghyan v Armenia](#), Application No 17804/09, judgment of 21 September 2021, para 52; [Bumbeş v Romania](#), Application No 18079/15 judgment of 3 May 2022, para 94;

¹⁰ Paragraph 3.14 (2016).

there is a need to thoroughly review the language used to describe the notification process on local authority webpages and in corresponding forms and relevant guidance, replacing references to ‘application’ (or similar) with ‘notification’.

- 2.6 ***The notification procedure (a single gateway):*** We underline the importance of having a clear and simple process for notification. In Northern Ireland, notification of processions via the [11/1](#) form is submitted to the police either in person (at the police station nearest to the proposed starting place of the procession) or by permitted electronic means.¹¹ The Chief Constable has an obligation to ensure that a copy of any notice is immediately sent to the Commission.¹² A key difference between Northern Ireland and Scotland is that, in Northern Ireland, static protest meetings related to a public procession must also be notified to the police using the [11/3](#) form (discussed further below).
- 2.7 The legislation in Scotland requires written notice to be given to the relevant local authority (or authorities if the procession will span more than one local authority area) *and* to the chief constable. We understand, however, that a single gateway (via the relevant council) exists in most local authority areas such that parade organisers do not also need to notify the police. **In our view, section 62(1)(b) Civic Government (Scotland) Act 1982 ought to be repealed so as to remove the apparently defunct requirement for organisers to submit notification to the chief constable.**
- 2.8 ***The scope of the notification requirement:*** We heard from several parties that the definition of ‘procession in public’ in section 62(12) of the Civic Government (Scotland) Act 1982 – “procession in public” means a procession in a public place’ – provides no guidance as to the kind of event that ought to be considered as a ‘procession’. The corresponding definition in section 17 of the Public Processions (NI) Act 1998 – “public procession” means a procession in a public place, whether or not involving the use of vehicles or other conveyances’ – is only marginally more

¹¹ Section 6(1A) and s.7(1A) of the [Public Processions \(NI\) Act](#) 1998 (as amended).

¹² [Section 6\(6\)](#) and [section 7\(5\)](#) Public Processions (NI) Act 1998.

elaborative, but it is accepted (even if not necessarily welcomed by those concerned) that this encompasses, for example, organised running and cycling events and convoys of classic cars.¹³

2.9 **While we have considered the possibility of recommending the introduction of a 14-day notification requirement for parade-related protests in Scotland, we are not convinced that doing so is either necessary or helpful.** In Northern Ireland, notification of a counter-protest has sometimes served as a proxy for registering concerns about a procession. However, rather than imposing equivalent procedural requirements on those who might wish to protest in Scotland, we believe that the better solution is to provide enhanced opportunities for those who may have concerns about a parade to be able to present their concerns to the relevant authority (see, for example, section 6.7 below).

2.10 ***The notification timeframe:*** In both Northern Ireland and Scotland, it is a legal requirement to provide 28-days advance notice for public processions.¹⁴ In Northern Ireland, organisers of protest meetings related to a procession must provide 14 days notification.¹⁵

2.11 In Scotland, [section 70 of the Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) raised the notification requirement from seven days to ‘no later than 28 days’ beforehand.¹⁶ The stated reasons for this change (which arose from a recommendation of the 2006 report of Review of Marches and Parades in Scotland by Sir John Orr) were to give local authorities and the police time to consider notifications in more detail, complete risk assessments and impact analyses, ensure a more consistent approach to decision-making, help more effective planning of police

¹³ The ‘[Advanced Search](#)’ function of the NI Parades Commission website – specifically the drop-down menus for ‘Organisation Type’ and ‘Purpose’ – helps give a sense of the spectrum of processions that fall within the statutory definition.

¹⁴ [Section 62\(2\), Civic Government \(Scotland\) Act 1982](#) and [section 6\(2\), Public Processions \(NI\) Act 1998](#). In Scotland, raised the notification requirement from seven days to ‘no later than 28 days’ beforehand (

¹⁵ [Section 7\(2\), Public Processions \(NI\) Act 1998](#).

¹⁶ See further, [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 Explanatory Notes](#).

resources, and ensure that communities have more notice of proposed processions in their areas and an opportunity to express their views.¹⁷

2.12 While some of those to whom we spoke (including parade organisers) were broadly in favour of retaining the 28-day notification timeframe, we have three concerns about the potential implications of doing so:

- i) *Risks entrenching a bureaucratic and regulatory mindset* (see also the discussion of Temporary Traffic Regulation Orders (TTROs) below). In international comparative terms, it is notable that a 28-day notification period is an outlier.¹⁸ In many countries, a significantly shorter notification period for processions is provided for. In this regard, following his country visit to the United Kingdom in 2013, the then UN Special Rapporteur on the Rights of Peaceful Assembly and Association, Maina Kiai, stated:

The Special Rapporteur notes that the 28-day notice period is underpinned by a desire to ensure that notifications are given due attention, facilitation of the events is effectively planned and all concerned parties are adequately consulted. He however believes that a much shorter notification period should be in place as a majority of the processions in Scotland recur annually, such as those held by the Loyal Orders, and therefore these types of processions are fairly predictable as to facilitation needs.

By contrast, processions and assemblies taking place for the first time constitute a minority of the events for which prior notification is required. Even in these cases, it cannot be presumed that a 28-day notification period is necessary. Notification procedures should be subject to a proportionality assessment. This implies that the period

¹⁷ Orr Report, para 12.4. See further, 'Action by local authorities during the 28 day notification period', paras 12.11-12.13, and 'Risk assessment and impact analysis', paras 12.14-12.18.

¹⁸ See, for example, Jacob Zenn, '[Freedom of Assembly: Procedures of Permission and Notification](#)' (ICNL: 2013).

*within which a prior notification is required to be submitted should be proportionate to the objective the notification is supposed to achieve. A 28-day notification is inordinately long considering that processions in Scotland do not raise overly complex questions for resolution. A waiver of this notice period can be granted only in exceptional circumstances and therefore does not ease this requirement.*¹⁹

- ii) Encourages short-term dialogue and sets unrealistic expectations of what this can achieve: The 28-day timeframe creates the impression that 28 days somehow allows sufficient opportunity for dialogue (mediated or otherwise) and unhelpfully ties such dialogue to the notification process. In our view, this potentially becomes an obstacle to developing a broader culture of dialogue enabling relationships that are built on trust and capable of sustaining ways of dealing with contention in the long term.

- iii) *Increases the risk (or perception) of inconsistency in responding to late notifications:* The 28-day timeframe is primarily designed to accommodate parades that take place annually on a cyclical basis and is not well suited to other types of procession. In consequence, organisers of such processions might struggle to provide the requisite notice – and may then have to explain why it was not reasonably practicable to provide 28-days’ notice. In Northern Ireland, if not reasonably practicable to give 28-days’ notice, notice must be given ‘as soon as it is reasonably practicable’ to do so.²⁰ In Scotland, a local authority *may*, in exceptional circumstances after consulting with the Chief Constable, dispense with the notification requirement if a person proposing to hold a procession applies to the authority setting out the reasons why timely notification was not provided).²¹

¹⁹ [A/HRC/23/39/Add.1](#), Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai: Mission to the United Kingdom of Great Britain and Northern Ireland (17 June 2013).

²⁰ s.6(2(b) Public Processions (NI) Act 1998.

²¹ Section 62(4) and Section 62(5). This application is to the council but ‘intimated to the chief constable’.

Neither in Northern Ireland nor in Scotland does the legislation specify who should assess whether or not timely notification was ‘practicable’ or decide whether or not to accept a late notification²² and no guidance is provided in terms of how late notifications are dealt with. As such, waiving the notification requirement gives rise to concerns regarding consistency. In this regard, to insist on the 28-day requirement would be in tension with the permitted justification for notification requirements – i.e. that they may be imposed only to enable the better facilitation of the right of peaceful assembly.

2.13 **Exemptions:** Funeral processions are exempted from the notification requirement in both jurisdictions.²³ In Northern Ireland, the Secretary of State may specify a class or description of procession that is exempt from the notification requirement (and Salvation Army parades have been exempted in this way).²⁴ Similarly, in Scotland, Scottish Ministers can make an order specifying other processions or class of processions to which the notification requirement does not apply.²⁵

2.14 **Incomplete notification:** The specific issue arose in Northern Ireland in July 2005 of whether the notification form needed to specify an *individual* organiser, or whether instead a number of persons could be listed as *de facto* organisers jointly. The Orange Order argued that no single person in an Orange Lodge should be held individually responsible. In the face of a legal challenge, ultimately the NI Parades Commission decided to accept the form with multiple names listed. A more recent challenge was brought where the name of the organiser was omitted from the notification form for a parade related protest meeting. Here, the Court held that it

²² In Northern Ireland, the 11/1 form (for processions) states that it is the Parades Commission who ‘may refuse to accept an incomplete form’, while the 11/3 notification form (for protest meetings) states that it is the police who ‘may refuse to accept an incomplete form’ (though this division of responsibility seems somewhat anomalous following the 2005 reforms). The relevant police District Commander (or their deputy) must give his/her views (on Form 11/4) which is forwarded to the Commission – see the [PSNI Service Procedure SP14/2008](#) (now superseded) at para 1(10).

²³ [Section 62\(11B\), Civic Government \(Scotland\) Act 1982](#) and [section 6\(5\), Public Processions \(NI\) Act 1998](#)

²⁴ [Section 62\(11B\)\(b\), Civic Government \(Scotland\) Act 1982](#) and [section 6\(5\)\(b\), Public Processions \(NI\) Act 1998](#)

²⁵ [Section 62, Civic Government \(Scotland\) Act 1982](#) (by way of statutory instrument subject to the negative resolution procedure).

was entirely correct for the NI Parades Commission to accept and consider even incomplete notifications. The Court concluded that ‘... the legislature did not intend that any failure to comply to the letter with the completion of the form would render it invalid and/or void and/or incapable of being accepted either by the PSNI or by the Parades Commission.’²⁶

2.15 **Non-notification:** The powers of the Local Authority under section 63 Civic Government (Scotland) Act 1982 can only be exercised in relation to a procession that has been notified or where notice ‘falls to be treated *as having been given* in accordance with s.62(1)’. The NI Parades Commission’s Procedural Rules (para.5.3) suggest that a Commission meeting and decision would follow only *after* ‘notification’. **In our view, Local Authorities in Scotland should be able to rule on unnotified processions. This argument is afforded some support by the English case of *Powlesland v Director of Public Prosecutions (2013)*. Here, the court rejected an argument that the police had no power to impose conditions on a procession (a critical mass bicycle ride) simply because its route had not been formally notified. The Court emphasised that the purpose of section 12 of the *Public Order Act 1986* (which, like section 63 of the Civic Government (Scotland) Act 1982, provides the statutory foundation for the imposition of restrictions on public processions) was ‘to enable an advance precautionary direction to be given for processions which are proposed, notified or not...’ The court stated that ‘[t]here is no purpose in excluding unnotified processions from the scope of the power to give an advance precautionary direction.’²⁷**

²⁶ [In re CE's Application for Judicial Review](#) [2015] NIQB 55, paras 18-21. Horner J also tentatively suggested that ‘[t]he box in Part 1 presently reads “name of person organising the protest” should perhaps be changed to “name of the person organising the protest or persons organising the protest if there is an organising body”.’

²⁷ Hamilton, M., ‘Processions, Protests and Other Meetings’ in Dickson, B. and Gormally, B. (eds.) *Human Rights in Northern Ireland* (Hart Publishing: 2015) pp. 179-206.

3. Publication of details

- 3.1 Sections 63(9) and 63(10) of the [Civic Government \(Scotland\) Act 1982](#) provide that the local authority shall compile, maintain and make available to the public, free of charge, a list containing information about: (a) processions which have, after the coming into force of this subsection, been held in their area; (b) proposed processions which they have, after that time, prohibited under this section. A local authority shall make sufficient arrangements to secure that any person, body or other grouping resident in or otherwise present in their area who makes a request for the purposes of this subsection is enabled to receive information about processions which are to or might be held in that area or in any part of it specified in the request.
- 3.2 The NI Parades Commission posts information about upcoming parades on its [website](#) and stressed to us the important difference between making such information as accessible as possible (which it sought to do) and actively *soliciting* concerns from potentially interested parties (which it did not do).
- 3.3 **We have not been able to review the effectiveness of all the mechanisms that Local Authorities use to publish notifications for a procession (including, for example, the opt-in lists of interested parties), but we would underline the importance of relevant information being made available to the public in an accessible way.** Michael Rosie described the ‘very mixed quality of accessible information available online’ and noted that this had been raised in the Orr Report.²⁸ In 2020, he further reported ‘mixed progress’ in this regard.²⁹

²⁸ Rosie 2016: 3.51, 3.53-3.58.

²⁹ Rosie 2020: 3.58.

4. Collecting evidence: interested parties and the potential role of case workers

- 4.1 In order to make decisions or determinations on a procession, a process of evidence or information gathering is required. Understandably, a substantial amount of information will be provided by the police. It is the police that have to find the resources in order that people can safely parade and protest (and the police may conceivably also be in possession of relevant intelligence). Their officers usually have experience of the area and will have an understanding of past events and the current, localised, social and political context. In both Scotland and Northern Ireland, no other institution or group has historically had equivalent capacity to collect and provide such evidence.
- 4.2 This raises some important issues. Without going into too much detail, the NI Parades Commission was created in order to remove the responsibility of decision-making from the police (then the Royal Ulster Constabulary, RUC) thereby ‘depoliticising’ policing.³⁰ It can be argued that, in Northern Ireland, this was beneficial because it facilitated the process of police reform which led to the RUC becoming the Police Service of Northern Ireland (PSNI). In Scotland, it is similarly accepted by many that having decisions taken by the Local Authority helps remove any charge of political policing. It becomes the job of the police to police the decision or determination made by the Local Authority about a procession. In both cases, the police retain broad legal powers to intervene on the day (including, for example, to prevent an imminent breach of the peace).
- 4.3 There are two ways this relationship can come under some tension. First, does the body making the decision, the Local Authority or the NI Parades Commission, have sufficient experience to question and challenge public order and other information provided by the police? This is not necessarily to be critical of the police, but at the heart of the mechanisms in Scotland and Northern Ireland is the principle that

³⁰ *Review of Parades and Marches in Northern Ireland* (known as the *The North Report*), 1997.

decision-making should be independent and involve critical engagement with the evidence, including that provided by the police.

4.4 Second, and related to the above, how is the evidence provided by the police considered alongside evidence from other sources? Does the Local Authority or the NI Parades Commission have sufficient capacity to collect relevant information and how is evidence from other parties used?

4.5 Such capacity was built into the NI Parades Commission model from the outset, though the *North Review* also sounded a cautionary note that having too close a relationship between the adjudicatory and mediation functions may undermine both. The North report concluded that:

‘... it would not be right to recommend that, as a matter of course, mediators should report to the Parades Commission on the progress of local discussions, as they could then be seen as an arm of the Parades Commission and thus lose effectiveness. They should, however, report success or failure within a set timescale.’³¹

4.6 In 1998, the NI Parades Commission had 12 part-time Authorised Officers working in pairs (balanced, where possible, in terms of gender and religion) across Northern Ireland to collect relevant information and to encourage mediation. The Authorised Officers were self-employed and trained by Mediation Northern Ireland. In the words of then Secretary of State, Adam Ingram, their role was initially envisaged as being to ‘discharge the function of mediation and get as closely engaged with the process as possible.’³² Their main responsibilities were subsequently stated by the Commission as being:

- a) gathering information about parades and the areas in which they are held and reporting to the Commission accordingly;

³¹ *The North Report*, (1997), p.144, para.12.46.

³² HC Deb., 4th February 1998, Col.1163.

- b) making contact and building relationships with local groups and individuals, including parade organisers and residents' associations;
- c) helping the Commission to communicate with specified parties by disseminating information from the Commission, including, where appropriate, serving determinations in respect of particular parades;
- d) taking steps to secure local accommodation in relation to parade disputes, including the more long-term approach of community development which seeks to promote and support community activity to build the potential for local accommodation;
- e) reporting to the Commission on the potential for such accommodation;
- f) engaging with community groups in an educational process about the Parades Commission, how it operates, the extent of its powers and decision making process;
- g) reporting to the Commission in the aftermath of contentious parades on how the parade was conducted.³³

4.7 The Commission's *Procedural Rules* provided that the Authorised Officers would act on the Commission's behalf in gathering information,³⁴ would be party to confidential evidence,³⁵ and would also report to the Commission on the potential for achieving local accommodation 'and on any steps taken towards securing accommodation by the parties to a dispute.'³⁶

4.8 Authorised Officer reports might, for example, have outlined a number of options for the Commission to consider. Indeed, Authorised Officers were sometimes invited (or may themselves have requested an opportunity) to make a presentation to

³³ Parades Commission (2000) *Second Annual Report 1999-2000*, pp.21-22. The 2002 *Quigley Report* referred to the role of the Authorised Officers as 'educating and informing' the NI Parades Commission and identified three benefits from their work: (1) reporting on local efforts to reach accommodation; (2) harvesting public perceptions of issues around parades; and (3) suggesting options for the Commission to consider. See, *The Quigley Report* (2002), p.215, para.16.39.

³⁴ Parades Commission (May 2002), *Procedural Rules*, p.3, para.2.2.

³⁵ *Ibid.*, p.3, para.3.3.

³⁶ *Ibid.*, p.4, para.4.3.

Commissioners on recent or potential developments in particular locations. They did not, however, participate in the Commission's decision-making.

4.9 In 2002, it was decided that the Authorised Officers should not have a reporting function on the conduct of parades (this, instead, being fulfilled by a team of parades monitors recruited specifically for that task) since reporting on compliance with the Code of Conduct might undermine the capacity of the Authorised Officers to engage in mediative work.³⁷ Thus, for a period, the Commission utilised monitors at parades to record examples of compliance or non-compliance with the statutory Code of Conduct and to report back to the Commission. This was an important resource at a time when there were a significant number of parade disputes with widespread repercussions for Northern Ireland. Over the years, partly due to reduced resources but also because the capacity to undertake mediation exists outside the Commission, the Authorised Officers have been reduced to two full time 'case workers'. We were told that they were not directly involved in any mediation work but instead collected information on particular areas to provide a basis for the NI Parades Commission to make informed determinations.

4.10 While there are different structures and processes across the Local Authorities in Scotland, it was common for officers of the Local Authority to undertake these information gathering tasks. We spoke to a number of very experienced Council officials with a great deal of knowledge and expertise in undertaking this work. In many areas of Scotland, the system appears to be under no particular strain but there did nonetheless seem to be significant reliance on Police Scotland in terms of how the Local Authority assessed the potential for disorder or disruption and also the potential impact of a procession on the rights and freedoms of others.

³⁷ This was one of the recommendations of the Northern Ireland Affairs Select Committee – 'that the Commission should not use [the Authorised Officers] to report on parades, but should employ separate staff for this purpose.' Northern Ireland Affairs Committee (2000-2001) *Second Report: The Parades Commission*. HC120-I, p.xx, para.78.

4.11 We also note that the 2006 Guidance for Scottish Local Authorities does ‘place a lot of emphasis on community consultation and the importance of gathering community views and the need to keep them informed of what is going on in their area.’³⁸ The 2006 Guidance on the role of interested parties makes it clear that it is important every effort should be made to engage with interested parties:

53. Your local authority’s website should also make it clear that they let organisations on their opt-in list know about processions beforehand. The web page should also invite other interested individuals, organisations and groups to get in touch to ask for their names be added.³⁹

4.12 Central to this is the building of relationships and good lines of (voluntary) communication. The 2006 Guidelines make clear the importance of these meetings:

60. A precursory meeting is a discussion between your local authority, the police and the organiser which is an informal way of providing a useful face-to-face opportunity for everyone to go through the notification and discuss any issues or problems. This is not a legal requirement but should benefit the arrangements for holding a procession. It may also be appropriate to invite community organisations along and any business representatives to receive their views. Or, your local authority may decide that it would be better for community organisations to be represented at the full decision-making meeting of the relevant council committee and to go to the debriefing meeting.⁴⁰

4.13 We note the importance of the use of interagency working and the bringing together of interested parties through structures such as the Event Planning and Operations Group (EPOG) and the Safety Advisory Group (SAG) processes as used by (amongst others) the City of Edinburgh Council and Scottish Borders Council. We have not

³⁸ 2006 Guidance for Scottish Local Authorities pt54, p.20.

³⁹ [Review of Marches and Parades In Scotland: Guidance for Scottish Local Authorities](#) (2006), p.20, para.53.

⁴⁰ [Review of Marches and Parades In Scotland: Guidance for Scottish Local Authorities](#) (2006), p.22, para.60.

been in a position to look at these processes in detail, but in the report compiled by Michael Rosie in 2016 these were highlighted as good practice.⁴¹ While noting some potential issues,⁴² the Rosie report reiterated the importance of interagency working and the importance of sharing good practice.⁴³

- 4.14 The resourcing of such processes can have important outcomes. Rosie notes ‘the SAG process has, for example, markedly improved the stewarding of key ‘Common Riding’ events in the Borders, reducing the police resources required’.⁴⁴ Well-resourced interagency work can be very beneficial in reducing the need for routine and long-term deployment of significant policing resources. Stewarding, as we will discuss below, is a good example of where resourcing and enhanced skills can be developed within groups in ways that benefit the planning process for the Local Authority and the Police.
- 4.15 Moreover, engagement with interested parties should take place on a number of levels. Its facilitation requires, amongst other things, a good understanding of the areas and people impacted by a parade; trusted channels of communication between different actors (including the police and the Local Authority and both the organisers and those impacted by a parade); timely and clear communications in relation to decision-making process and any decisions made; and a review of any events within the communities impacted. Again, multi-agency initiatives (such as Safety Advisory Groups or Event Planning & Operations Groups) convened by the Local Authority should be at the core of such relationship building and the facilitation of dialogue. As we have identified elsewhere in this report, resourcing will be needed to better enable this work and to appropriately capture the resulting knowledge within the Local Authority.

⁴¹ Rosie 2016, 3.20-3.31

⁴² Rosie 2016, 3.28.

⁴³ Rosie 2016, 3.29.

⁴⁴ Rosie 2016, 3.26.

4.16 The police have their own duties with regard to information gathering and decision-making over processions and they have set out their own guidance on this issue where they identify an ongoing process of ‘community mapping’.⁴⁵ In some key areas it appears that active engagement with interested parties routinely falls to the police. And, at the very least, even when an experienced Council employee was involved, there was not a clear demarcation of roles between the police and the Council. We are not impugning the quality of the work by either Local Authorities or Police Scotland, but rather suggesting that there is potentially a greater reliance on the police than was envisaged in the legislation.

4.17 One example of this is around the production of a ‘community impact assessment’ by the Local Authority:

Depending on the nature of the event, your local authority, in close discussion with the police, should carry out an assessment of the risk of holding the procession against the considerations set out in section 63(8) of the 1982 Act (including any information available on previous processions).’

⁴⁶

4.18 *The Guidance for Scottish Local Authorities* (2006) further suggests this will lead to better and more informed decision-making because your local authority will have:

- identified the known dangers and risks associated with holding the procession;
- a better knowledge on which to decide whether and what precautions could be taken to reduce or get rid of risks; and
- a better idea of what preventative measures they may need to take now and for future processions.⁴⁷

⁴⁵ Community Engagement Framework for Policing of Public Processions, Assemblies and Protests in Scotland, Police Scotland/Poileas Alba, ND

⁴⁶ Review of marches and parades in Scotland: Guidance for Scottish Local Authorities (December 2006).

⁴⁷ 2006 Guidance for Scottish Local Authorities Pt 62 p.22

- 4.19 The clear objective of the legislation expanded in the *Guidance for Scottish Local Authorities* is for the Council to develop what might be called ‘Institutional Knowledge’ in order to better process notifications for parades and aid decision-making (see further Section 11 below). We were struck by the knowledge and experience regarding processions held by individuals within different Local Authorities. However, our Short Life Working Group did not have the capacity to fully review how each Local Authority seeks to capture, retain and share this knowledge. We are under the strong impression that data concerning notified processions and the way in which they are regulated across Scotland has not been collected into a significant centralised body of knowledge. We suggest that COSLA or another appropriate body undertake this work.
- 4.20 We would like to underline the recommendation made in Rosie’s 2016 review of progress (a decade on from the 2006 *Orr Report*) in emphasising that ‘Local authorities and police should give further serious consideration to using the Event Planning and Operations Group (EPOG)/Safety Advisory Group (SAG) process as used by The City of Edinburgh Council and Scottish Borders Council respectively, as a model that could be adapted to local circumstance’.⁴⁸ In addition ‘the Scottish Government might give some thought as to how to best support CoSLA in encouraging the widest dissemination and implementation of good practice in planning around marches and parades’.⁴⁹
- 4.21 The Christie Report (2011) emphasised that it is sometimes necessary to enhance resources and capacity in one area to reduce spending in another.⁵⁰ We would suggest that extending the capacity of Local Authorities (perhaps Glasgow in particular) to collect evidence, engage with interested parties, develop case studies and potentially facilitate negotiation and mediation, may have a long-term impact in reducing conflict. To repeat, this is not a reflection on the work that Police

⁴⁸ Rosie 2016, 3.29

⁴⁹ Rosie 2016, 3.29

⁵⁰ <https://www.gov.scot/publications/commission-future-delivery-public-services/> ‘We must prioritise expenditure on public services which prevent negative outcomes from arising.’

Scotland and Local Authorities have been undertaking, but a suggestion that seeks to rebalance the process so that the Council, the civic authority, is at the centre. Community impact assessments could also be an integral part of the process, but we have not been able to fully establish the modalities of how such assessments might best be facilitated. That said, our sense is that more robust Community Assessments with greater involvement from stakeholders and communities would be beneficial.

5. Decision making in relation to ‘contested’ or ‘sensitive’ parades

- 5.1 One key difference between a notification process and a process premised on the granting of authorisation, license or permit concerns the way in which notified processions are processed and considered by the relevant authority. In a notification paradigm, it should not be assumed that all notified processions would be subject to a formal decision-making process. There is, instead, a presumption in favour of the right of peaceful assembly. In contrast, an authorisation paradigm displaces this presumption, holding instead that an assembly *must* go through an affirmative approval process before the right may be exercised. The implication here is that some initial assessment must be made as to whether a procession (and perhaps also any related protest meeting) ought to trigger a formal adjudication process. In the following section, we consider how such a process might usefully operate.
- 5.2 When the NI Parades Commission was given the authority to make determinations on parades in 1998 it was to take the pressure off the police in making those decisions. This is related to the historic position of the Royal Ulster Constabulary, the eventual need for police reform and some very high-profile disputes over parades in Northern Ireland in the 1990s during the peace process. The context in which the NI Parades Commission came into existence is part of the peace process,

related to a deeply divided society and the potential for public disorder that had a hugely significant influence on peoples' everyday lives.⁵¹

- 5.3 The context in Scotland is very different. Nevertheless, legislation in Scotland shares with Northern Ireland the idea that decisions concerning the right of peaceful assembly should lie mainly with a form of civic authority rather than with the police.⁵² In Scotland it is a Local Authority, in Northern Ireland it is the Parades Commission. These forms of civic authority differ in a number of respects, but they share something important in common. In being granted authority to make decisions over events that are ultimately to be 'policed' mainly by the police, the authority needs to develop a relationship of trust with the police whilst at the same time remaining independent from the police and not over-relying on police submissions. It should also be noted that ultimately any decisions can be challenged in the courts.
- 5.4 In both contexts, legislation provides a broad context for this relationship but as can be evidenced in both jurisdictions there can be real and understandable tensions. This is clear in two particular respects: (i) the police, legitimately, provide important evidence in respect of a procession and their assessment of its likely impact against the statutory criteria (including in relation to potential disorder and/or disruption) and (ii) the police are then required to 'police' the procession, making decisions based on a human rights framework. Broadly speaking the police are well resourced, they have mechanisms for collecting information, and they have officers who have long-standing experience in policing processions.
- 5.5 Unsurprisingly, there is a danger both in Scotland and Northern Ireland that the decision-making authority becomes over reliant on information provided by the police. This is not a criticism of any of the institutions that we have met with but an

⁵¹ Further information on the role of the PSNI in relation to processions can be found here: <https://www.psni.police.uk/advice-information/parades-and-public-processions/>

⁵² It is worth noting that, in England and Wales, decision-making in relation both to processions and other assemblies lies primarily with the police (see, [sections 12 and 14, Public Order Act 1986](#)).

outworking of the legitimate separation of decision-making over processions from the institution of the police.

- 5.6 There is therefore an important division of labour to be developed between the police and those with the authority to make decisions. This requires that the Local Authority (or the Parades Commission) has sufficient capacity, experience and robust mechanisms with which to collect information, facilitate channels of (voluntary) communication between the police and procession organisers, engage with interested parties, engage and question the police, call on community impact assessments and provide a robust mechanism for making decisions. The working group notes that in some areas of Scotland this is a relatively small function for the Local Authority, however in Glasgow, Edinburgh and a number of surrounding areas this is much more significant.
- 5.7 **Our working groups suggests that in certain areas of Scotland, the Local Authority should have sufficient resources and capacity to undertake its adjudicatory responsibilities without relying exclusively on Police Scotland (whilst recognising too that a good working partnership with the police will often also be important).**
- 5.8 Where Local Authority officials in Scotland are of the view that any issues about a notified procession (including concerns arising from a previous event) can be dealt with through informal contact with the organiser – either by phone or e-mail, or through a meeting with the organiser and the police – a fast-track procedure (avoiding the formal convening of a Processions or Licensing committee) is often followed. While the fast-track procedure does not absolve the Local Authority from publishing the notice and from contacting those on relevant opt-in lists, it offers organisers of a procession – providing that any issues identified have been dealt with to the satisfaction of the Local Authority (in consultation with Police Scotland) – the possibility of early confirmation that the event can go ahead, with or without conditions.⁵³

⁵³ Review of marches and parades in Scotland: Guidance for Scottish Local Authorities (December 2006), para 75.

5.9 In Northern Ireland, where a procession is identified as ‘sensitive’, the Police Service of Northern Ireland will be asked to submit a detailed report on Form 11/9, detailing analysis of the human rights implications (including engagement of competing rights).⁵⁴

5.10 Without a clear understanding of what the terms ‘sensitive’ and ‘contentious’ mean, their invocation can sometimes appear subjective or speculative. Some of those to whom we spoke raised concerns about the *measure* used to determine contention or sensitivity. Clearly, at one level, contestation simply means that there is a level of concern in relation to, or perhaps even opposition to, a notified procession. However, given that categorising a procession as contested or sensitive has the effect of escalating its consideration within the regulatory process, we believe that it is important that any such ‘filtering’ of processions is undertaken in Scotland by Local Authorities against benchmarks that are transparent and that operate to amplify legitimate concerns (those that ought to be addressed) and to sift out those that are either trivial or vexatious. In this regard, we also note some of the observations made by Michael Rosie in his 2016 report:⁵⁵

‘Relatively little guidance ... is given on what kinds of comments and objections local authorities can meaningfully act upon. This would be useful since we heard the frustration from some local authority officials that many of the objections they received fell outside what could be acted upon’.⁵⁶

Similarly, in our view, it is vital to ensure greater public understanding of the principles that Local Authorities rely upon when assessing the relevance and merit of concerns regarding a procession.⁵⁷

⁵⁴ Committee on the Administration of Justice (CAJ), [‘How Public Order Policing Works in Northern Ireland: Standards and Accountability’](#) (February 2016), p.5.

⁵⁵ Rosie 2016: 3.64-3.68

⁵⁶ Rosie 2016, 3.66

⁵⁷ Rosie 2020, 3.168

- 5.11 The regulatory system should aim to be streamlined and light-touch so as to enable the filtering-out of processions that do not require any form of adjudication. This filtering process – and any subsequent intervention by the relevant authorities – should be based on the anticipated impact of the procession (and not on *who* is marching or what is the message being conveyed – with the exception of messages that advocate hatred constituting incitement to discrimination, hostility or violence).⁵⁸
- 5.12 **To ensure greater certainty and consistency in this regard, the Working Group considers that the initial (*prima facie*) measure of contestation or sensitivity should be whether or not a procession raises rights-based concerns. In other words, is there compelling evidence to suggest that a notified procession raises concerns that map onto the legitimate aims set out in Article 11(2) ECHR (principally, the prevention of disorder or crime and/or the protection of the rights and freedoms of others). In part, this assessment involves considering whether the impact of a procession on others may reach the relevant threshold such as to *engage* other rights (including the right to private life under Article 8 ECHR or the right to peaceful enjoyment of possessions under Article 1 of Protocol 1 ECHR – see further, section 7.7 below). Human rights considerations should be at the core of decision-making and a rights-based approach should be firmly embedded in the regulatory process (albeit in a way that avoids unduly legalistic terminology).**
- 5.13 The Local Authority should seek to provide a summary explanation of any such concerns *early* in the decision-making process (not simply in a final decision or determination) so as to enable the relevant parties to take all reasonable steps to address the issues raised. As discussed (see, in particular, sections 4 and 7), and while we stress again that we have not been able to undertake a full review of the process, a multi-agency model – involving organisations with as wide a community

⁵⁸ UN Human Rights Committee, [General Comment No. 37](#) (2020) on the right of peaceful assembly (article 21 ICCPR), 17 September 2020, para 22: ‘The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be “content neutral” and not be based on the identity of the participants or their relationship with the authorities.’

reach as possible and who are privy to different sources of information – should be adopted so as to more comprehensively inform any rights-based assessment.

- 5.14 **Two specific questions that would benefit from further consideration and discussion amongst stakeholders in Scotland are whether Local Authorities should have the power to impose conditions on (a) related protest meetings and (b) supporters of processions.**
- 5.15 The Public Processions (NI) Act 1998 was amended in 2005 to confer on the NI Parades Commission the power to impose conditions on both counter-protesters and supporters of processions.⁵⁹ While we did not hear strong views on these points in Scotland, we can see some merit in having the *same* regulatory body taking decisions about processions, supporters of processions and any related counter-protests (even if the latter are not required to be notified – see further, **Section 2.9** above).
- 5.16 The question of how the Local Authority might seek to impose conditions on protest meetings not subject to an advance notification requirement is not without precedent. In this regard, it is of note that such a power already exists for Local Authorities in relation to funeral processions (for which no notification requirement exists)⁶⁰ and also for the police in relation to assemblies ‘being held’ or ‘intended to be held’ (but similarly, not subject to a prior notification requirement).⁶¹ See also the discussion of the *Powlesland* case at **Section 2.15** above).
- 5.17 The reason that the adjudicatory remit of the NI Parades Commission was extended to include protest-meetings and supporters of processions was to ensure that the decision-making authority possessed the requisite powers to cover different

⁵⁹ [The Public Processions \(Amendment\) \(Northern Ireland\) Order 2005](#).

⁶⁰ Under [section 63\(5\)](#) of the Civic Government (Scotland) Act 1982, local authorities can impose conditions on funeral processions or any processions specified in an order made by Scottish Ministers under section 62(11B)(b) of the 1982 Act (neither of which are subject to a prior notification requirement). See also the [Explanatory Notes](#) to section 71(3), Police, Public Order and Criminal Justice (Scotland) Act 2006.

⁶¹ [Section 14](#) of the Public Order Act 1986 confers on a senior police officer the power to impose conditions on assemblies ‘being held’ or ‘intended to be held’ (but not subject to a prior notification requirement).

eventualities within the totality of related events. The Commission has on many occasions utilised these powers to impose conditions on related protest meetings⁶² and on supporters of a procession.⁶³

- 5.18 Maintaining a division of labour between Local Authorities and Police Scotland in respect of processions, protests and supporters potentially risks decisions being made on the basis of different logics and priorities (those of the local authority and those of the police, respectively). **As such, the rationale for potentially extending the powers of Local Authorities to related protest meetings and supporters is not primarily about expanding the regulatory framework, but rather to firmly locate the decision-making power in a single place, reduce the risk of uncoordinated decision-making at a practical level, and crucially, to ensure that a wider knowledge base (beyond the police) is ultimately relied upon to inform decisions that are closely related and that inevitably impact on one another.**
- 5.19 A further striking difference between Northern Ireland and Scotland is that in Northern Ireland, only the Secretary of State (and neither the police nor the Parades Commission) can *prohibit* a public procession⁶⁴ – even if it has sometimes been argued by the affected parties that the conditions imposed are tantamount to a prohibition. In Scotland, the power to prohibit processions (as with the power to impose conditions) lies with Local Authorities.⁶⁵ Notably, however, in Northern Ireland the power to prohibit processions and open-air public meetings does not reside with the NI Parades Commission but lies instead with either the Department of Justice (on the basis of *serious* disorder, *serious* disruption, or undue demands upon the police) or with the Secretary of State (on the basis of undue demands on the *military*).⁶⁶ In England and Wales, the power to prohibit does not reside with the police, but involves an application by the police to the local council for a prohibition

⁶² See, for example, [Determination made in relation to the parade-related protest by Rasharkin Residents Collective Notified to take place in Rasharkin on Friday 17 August 2018](#).

⁶³ See, for example, [Determination made in relation to the No.9 District Loyal Orange Lodge Parade notified to take place in Belfast on 25 June 2022](#), para G.

⁶⁴ [Section 11](#), Public Processions (NI) Act 1998.

⁶⁵ [Sections 63\(1\)\(i\), 63\(5\)\(b\) and 63\(8\)](#) Civic Government (Scotland) Act 1982.

⁶⁶ [Article 5](#), Public Order (NI) Order 1987.

order (of up to 3 months) and the relevant council must in turn obtain the consent of the Secretary of State.⁶⁷

- 5.20 **While these powers to prohibit are very rarely used, the fact that no distinction is made in Scotland between *imposing conditions on* and *prohibiting* processions (in terms of both the relevant authority and the corresponding statutory criteria) may strengthen and entrench the misplaced idea that the regulation of processions is a ‘licensing’ matter and serve to embolden a public perception that it is the gift of the Local Authority to grant or deny an ‘application’. We suggest that there may be some advantage in locating the power to *prohibit* public processions outside of Local Authorities, and in creating a higher statutory threshold for prohibition than exists for imposing conditions.**

6. Status of evidence (confidentiality and transparency)

- 6.1 In contrast to the public nature of Licensing Committees or Processions Committees convened by local authorities in Scotland, Rule 3.3 of the NI Parades Commission’s [Procedural Rules](#) (2005) provides that:

All evidence provided to the Commission, both oral and written, will be treated as confidential and only for the use of the Commission, those employed by the Commission and Authorised Officers. The Commission, however, reserves the right to express unattributed general views heard in evidence.

- 6.2 We heard how confidentiality within the process is important in a deeply divided society such as Northern Ireland to give confidence to those who might otherwise be afraid to speak out against a parade; to enable some to engage with the regulatory

⁶⁷ [Section 13](#), Public Order Act 1986 (and similarly under Section 14A of the 1986 Act in relation to ‘trespassory assemblies’).

authority where they might not wish it to be known that they were doing so; and from the perspective of the regulatory authority, being able to hear views that they would not otherwise be exposed to. We heard from some people in Scotland who expressed fears over coming forward to express their opinion on a procession.

- 6.3 In [*Tweed v Parades Commission for Northern Ireland*](#) (2006), the organiser of a parade in Dunloy sought to challenge the proportionality of restrictions which had been imposed by the Parades Commission. To do so, he sought full discovery of reports submitted to the Commission by both the police and the Commission's own Authorised Officers. In the House of Lords, Lord Carswell held that 'in order to assess the difficult issues of proportionality in this case, *the court* should have access as far as possible to the original documents from which the Commission received information and advice'. It would then be for the court to assess whether further disclosure to the applicant was justified (by asking whether it would significantly assist their case). Lord Brown nonetheless emphasised that courts should guard against mere 'fishing expeditions', and confidentiality remains a legitimate ground for refusing disclosure. This point was highlighted by the Northern Ireland Court of Appeal in a subsequent, this time unsuccessful, application for judicial review brought by the same applicant: In *Tweed's Application (No. 5)* (2009). Lord Justice Girvan stated:

There is force in the contention that in many circumstances confidentiality is necessary to ensure a frank disclosure of information. The provision of a gist of the material will often ensure a fair procedure and Rule 3.3 must be read and applied as being subject to that power. Furthermore, if evidence prejudicial to the applicant is regarded as so confidential that not even a gist of it can be provided fairness may require that it is left out [of the] account.

- 6.4 In a separate case – *Anderson v Information Commissioner* (2011) – the leader of South Fermanagh Loyalist Flute Band sought disclosure of the detail of the allegations made against a procession in a report by one of the NI Parades Commission's monitors (submitted in confidence to the Commission). Crucial to the

outcome of this case was the fact that it did not involve a challenge to specific restrictions on a notified parade, but rather argued that Article 11 ECHR had been violated because the monitor's report *might* be relied upon by the Parades Commission as the basis for imposing *future* restrictions on the applicant's parades. The Parades Commission satisfied the Information Tribunal that 'substantial disclosure' had in fact been made which 'substantially apprised' the applicant of what was said in the Monitor's report. The Tribunal noted that if it had actually had to resolve the question (if Article 11 had in fact been engaged) the case would also potentially have engaged the Article 8 rights to respect for private life and correspondence of the Monitors. Indeed, the Tribunal held that:

... the public interest in protecting providers of information in these circumstances is ... very powerful. The Parades Commission would be serious [sic] handicapped if information ceased because there was no certainty of confidence. It could find itself unable to recruit monitors, hence effectively to perform its statutory function.

6.5 The applicant then appealed the Tribunal's decision to the High Court (under s.59 of the *Freedom of Information Act*). Mr Justice Weir concluded that 'the appellant's contention that Article 11 imposes a positive obligation giving a right to the information sought is not supported by any domestic or Strasbourg jurisprudence', and there is no right (under either Article 11 or Article 10 ECHR) to the provision of information provided in confidence.

6.6 While these conclusions seem unambiguous, a further question arises regarding the applicability of Article 6 ECHR to the workings of the regulatory authority. Article 6 protects the right to a fair hearing in both criminal trials and hearings which determine a person's 'civil rights and obligations'. The phrase 'civil rights and obligations', however, has traditionally been interpreted to apply only to rights where 'private law rights and obligations' are at stake. It is thus unclear whether any of the rights determined by Local Authorities in Scotland would fall within the civil head of Article 6(1). It is notable that Lord Rodger, in the case of *In re Duffy* (2008), remarked that 'the

Parades Commission is not a body to whose proceedings article 6 of the European Convention of Human Rights and Fundamental Freedoms applies'. In contrast, however, in its report on 'Parades and Protests in Northern Ireland' (November 2013), the Northern Ireland Human Rights Commission stated that 'Article 6(1) applies both to decision-making processes which permit parades and protests and to those which consider their permissibility after they have occurred.'⁶⁸

- 6.7 We heard from a number of people of the benefits of transparency relating to the public nature of the meetings of licensing or processions committees within local authorities in Scotland. **Nonetheless, given the intensity of public views in relation to parades in some areas (with corresponding pressure being felt by those who sit on the Licensing or Processions Committees) and also the need to ensure that those potentially affected by parades feel able to raise their concerns, we suggest 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.**

7. Interpreting the statutory criteria

- 7.1 The Public Processions (NI) Act 1998 extended the statutory criteria for determining whether conditions should be imposed on a parade in Northern Ireland. This was done in an attempt to move away from decisions based primarily on public order because such decision-making can itself escalate the potential for disorder (with groups seeking to threaten ever greater violence unless the others' rights are restricted). The Public Processions (NI) Act thus provides for the Parades Commission to have regard to 'any impact which the procession [or meeting] may

⁶⁸ See: <https://nihrc.org/publication/detail/parades-and-protests-in-northern-ireland>. The Council of Europe has published a [Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial \(civil limb\)](#) (updated to 31 December 2021) which addresses the question of the extension of Article 6 to other types of dispute.

have on relationships within the community.’⁶⁹ This criterion has however faced criticism, including from the Community Relations Council in Northern Ireland:

‘There is no indication of how [the impact of a parade on community relations] is monitored, either before or after the event, so that outcomes can inform future decisions. Nor is there any indication of a base line used in the setting of judgements.’⁷⁰

Given the different socio-political circumstances in Northern Ireland and Scotland, and moreover the need to enhance the clarity of decisions, we do not believe there is a convincing argument for extending this criterion to Scotland.

7.2 [Section 71](#) Police, Public Order and Criminal Justice (Scotland) Act 2006⁷¹ amended section 63 of the [Civic Government \(Scotland\) Act 1982](#) by, amongst other things, specifying the considerations (in section 63(8)) to which the local authority shall have regard when deciding whether to prohibit the holding of a procession or impose conditions on it:

- **the likely effect of holding the procession** on public safety, public order, damage to property, and disruption of community life;
- **the extent to which the containment of risks arising from the procession would** (whether by itself or in combination with any other circumstances) **place an excessive burden on the police;**
- **whether the organiser(s) or some of the likely participants have taken part in a previous procession(s) in the same local authority area** which

⁶⁹ Sections 8(6)(c) and 9A(6)(c).

⁷⁰ ‘Submission to the Northern Ireland Office on the Review of the Parades Commission from Community Relations Council’ (November 1999) in Northern Ireland Affairs Committee, *The Parades Commission*, HC120-II (2000–01) at 210.

⁷¹ Section 71, Police, Public Order and Criminal Justice (Scotland) Act 2006, [Explanatory Notes: Powers and duties of local authorities](#): This section makes amendments to section 63 of the 1982 Act. It enables local authorities to consider a wider range of issues when deciding whether a procession should take place or if conditions should be placed on it, such as the risk of damage to property or disruption to the life of the community and whether the procession would place an excessive burden on the police.

- breached any conditions or prohibition imposed,
- did not follow any local authority code of conduct,
- had the effect of multiplying either the risks to public safety, public order, damage to property, and disruption of community life or the burdens placed on the police in containing the risks arising from the procession.

7.3 The UN Human Rights Committee’s [General Comment No.37](#) should inform the interpretation of these criteria. For example, the criterion in section 63(8)(b) of the 1982 Act – the extent to which the containment of risks arising from the procession would ... place an excessive burden on the police – must be read in light of the State’s obligations to cover the costs of policing and security and other public services associated with peaceful assemblies.⁷² [General Comment No.37](#) also emphasises that States must ‘ensure adequate training and resources for officials involved in these decisions at all levels of government.’⁷³

7.4 A number of stakeholders spoke of the difficulty of interpreting the ‘disruption of the life of the community’ criterion.⁷⁴ It is noteworthy that the Westminster government’s intention in relation to the similarly worded provision in the 1986 Public Order Act (albeit, there further qualified as ‘serious disruption’) was to enable the police ‘to limit traffic congestion, or to prevent a bridge from being blocked, or to reduce the severe disruption sometimes suffered by pedestrians, business and commerce’. The examples cited were of ‘marches being held through shopping centres on Saturdays, or through city centres in the rush hour.’⁷⁵

7.5 The leading case in Northern Ireland concerning the interpretation of the equivalent ‘disruption’ provision there predates the establishment of the Parades Commission. It concerned the police decision not to issue any direction under [article 4 of the](#)

⁷² [General Comment No. 37](#), para 64. See also para 52.

⁷³ [General Comment No. 37](#), para 35.

⁷⁴ See for example D. Bryan, ‘The Politics of Community’ *Critical Review of International Social and Political Philosophy* Vol. 9, No. 4, 603–617, December 2006.

⁷⁵ Home Office, Review of Public Order Law (White Paper) (Cmnd 9510), London, HMSO, 1985, para. 4.22.

[Public Order \(NI\) Order 1987](#) (which also has the qualification ‘serious disruption’) to restrict an Orange parade on 12th July, 1991 in Pomeroy.⁷⁶ The applicant argued that the parade may result in serious public disorder, serious damage to property or serious disruption to the life of the community. Interpreting the latter provision for the first time in Northern Ireland, McCollum J stated that (amongst other factors) the effect of the parade on shops and other commercial activities in the village, and on the liberty and movement of the population, should be considered. Furthermore, the level of disruption might be affected by the demographic makeup of the majority population (and the fact that very few members of the community would wish to take part in or be associated with the parade). Although an appeal by the Chief Constable led to McCollum J’s ruling being overturned on the basis that the police had taken the relevant considerations into account, the then Lord Chief Justice, Sir Brian Hutton, affirmed the lower court’s broad interpretation of the ‘disruption’ criterion:

In applying those words it is appropriate ... to take account, not only of physical matters such as the disruption of traffic and the blocking of streets, but also of the annoyance and upset which may be caused to a community by a procession passing through it, if it is shown that as a consequence there is disruption to life in that community.

7.6 Fundamentally, this criterion must be viewed through the lens of human rights law. In this regard, General Comment 37 notes that ‘... broader society may be expected to accept some level of disruption as a result of the exercise of the right [of peaceful assembly].’⁷⁷ Moreover, ‘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 have to be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide

⁷⁶ *In the Matter of an Application for Judicial Review by Conor Murphy* (1991).

⁷⁷ UN Human Rights Committee, [General Comment No.37](#) on the right of peaceful assembly (article 21 ICCPR), 17 September 2020, para 31.

detailed justification for any restrictions'.⁷⁸ Crucially, '[a]n assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is "serious and sustained"'.⁷⁹ This cumulative requirement of disruption being both 'serious and sustained' is specifically intended to preclude dispersal in cases involving either serious disruption that is short-lived or long-term disruption that does not meet the requisite threshold of seriousness.

7.7 International human rights law also establishes a number of crucial legal threshold tests concerning **intimidation**,⁸⁰ **inhuman and degrading treatment**,⁸¹ **conduct interfering with private life**,⁸² and **hate speech**.⁸³ States also have a positive obligation to investigate in an effective manner whether speech or conduct (including materials posted online by private individuals) constitutes incitement to hatred and violence.⁸⁴

7.8 The relevance of previous processions in the same local authority area involving the *same* organiser and/or *some of the same* participants is expressly provided for in

⁷⁸ UN Human Rights Committee, [General Comment No.37](#), para 47.

⁷⁹ UN Human Rights Committee, [General Comment No. 37](#) para 85.

⁸⁰ E.g. [Fáber v Hungary](#) Application No 40721/08, judgment of 24 July 2012, paras 18 and 56.

⁸¹ E.g. [Identoba and Others v Georgia](#), Application No 73235/12, judgment of 12 May 2015, paras 65-81; [P.F. and E.F. v the United Kingdom](#), Application no. 28326/09, decision of 23 November 2010, para 38.

⁸² [Király and Dömötör v Hungary](#), Application no 10851/13, judgment of 17 January 2017, paras 41-43 and 60-82. See also, [Vona v Hungary](#), Application no 35943/10, judgment of 9 July 2017, para 66 ('the reliance of an association on paramilitary demonstrations which express racial division and implicitly call for race-based action must have an intimidating effect on members of a racial minority, especially when they are in their homes and as such constitute a captive audience'); [R.B. v. Hungary](#) Application no. [64602/12](#), judgment of 12 April 2016, para 99 ('the Court accepts that in certain situations the domestic authorities might be required to proceed with the dispersal of a violent and blatantly intolerant demonstration for the protection of an individual's private life under Article 8').

⁸³ See Article 20(2) ICCPR and Article 4 ICERD. In this regard, CERD General Recommendation No 35 at para 7 makes clear that the requirements of article 4 ICERD apply to racist hate speech in whatever forms it manifests itself, 'orally or in print, or disseminated through electronic media, including the Internet and social networking sites, as well as non-verbal forms of expression such as the display of racist symbols, images and behaviour at public gatherings, including sporting events.' Moreover, in its Concluding Observations on State Reports, the Committee has addressed the subject of assemblies involving hate speech and/or 'extremist' groups on a number of occasions: for example: [Japan](#) CCPR/C/JPN/CO/6, 20 August 2014, para 12; [Czech Republic](#), CCPR/C/CZE/CO/3 22 August 2013, para 8; [Belgium](#) CCPR/C/BEL/CO/5, 16 November 2010, para 22.

⁸⁴ [Beizaras and Levickas v Lithuania](#), Application No 41288/15, judgment of 14 January 2020, para 129.

s.63(8)(c)(iii) of the *Civic Government (Scotland) Act 1982*. **We recommend that further consideration be given to the factors relevant to the interpretation of the ‘disruption of the life of the community’ criterion (in section 63(8)(a)(iv) of the 1982 Act).** In making this recommendation, 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.⁸⁵ This is 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.

7.9 Emphatically, this is not to suggest that blanket restrictions (such as a quota on processions in a particular locality) could be imposed – and it does not detract in any way from the need to consider each notification on its own terms.⁸⁶ It is simply to say that the frequency and cumulative impact of parades in an area is *one* factor

⁸⁵ A similar point was accepted in the non-protest case of [Mayor and Burgesses of the London Borough of Bromley v Persons Unknown](#) [2020] EWCA Civ 12, paras 78-79. Here, in assessing the potential impact on the Gypsy and Traveller community of an injunction prohibiting encampment on or occupation of public spaces in one local authority area, Coulson LJ (with whom Haddon-Cave LJ agreed) held that even though each case must be looked at on its own merits, the cumulative impact of injunctions in other local authority areas was a material consideration in assessing the proportionality of an injunction in a specific local authority area, albeit one that should not be afforded undue weight or significance. In that case, the potential interference with the right to private and family life arose because of the imposition of injunctions prohibiting encampment (wheresoever they were imposed). For our purposes, the potential interference with the Article 8 right arises because of the impact of processions (irrespective of who is the organiser). In pointing to this non-protest case, we are not drawing any equivalence between the substantive impact of those injunctions and the substantive impact of processions: this must always be determined on the facts of each case and based on an assessment of what rights are engaged. Indeed, it seems to us logical also to recognise that a similar cumulative argument could be raised by those seeking to exercise their right of peaceful assembly: for example, that in assessing the proportionality of any restrictions on a particular procession, one material consideration (which again, should not be afforded undue weight or significance) would be the impact of restrictions on processions organised by the same organiser across different local authority areas.

⁸⁶ The 2006 Guidance to local authorities provides that: ‘Your local authority will need to consider the circumstances of each notification and assess how far the procession would affect the community or any individual or organisation who can reasonably be considered to be part of a community affected by the notification, and to attach weight accordingly.’

amongst many that the relevant authority may legitimately take into account as it seeks also to uphold the rights of those who live and work in an area.

8. Encouraging dialogue and enhancing mediation capacity

- 8.1 It has been recognised within the model utilised in Northern Ireland that forms of engagement are vital in improving the chances of conflict free processions. Although the 28-day notification period provided by the legislation provides a period for engaging with interested parties and potentially creating forms of negotiation between all the interested parties, if required, experience from Northern Ireland suggests long-term improvements in relationships around processions and protests requires the building of relationships and dialogue over a significant period of time (see also **Section 2.12(ii)** above). If we look at case studies in Northern Ireland around parades in the Ardoyne area of north Belfast and in Derry/Londonderry, negotiation and mediation took place over a number of years and involved a long-term strategy. In both cases, the NI Parades Commission was not directly involved although the decision-making might have reflected the position of parties at different points in time. Without going into these case studies in detail it is important to note that there now exists a wide range of people who have experience of mediating between parties around processions.
- 8.2 In Derry/Londonderry those processing and those protesting at the parades made significant moves to solve the problems that date back to 1996. Among other things this included the moving of parades to different dates, the withdrawal of protests, the development of a festival, significant efforts to improve and resource stewarding by those processing and the *Maiden City Accord* from The Bands Forum in Londonderry that makes clear what the public can expect from their processions.⁸⁷ This work was facilitated by key parties, including within the business community in Derry/Londonderry, and work done by loyalist groups within the city. Some of this

⁸⁷ <https://londonderrybandsforum.com/resources/#maiden-city-accord>

work has been captured in what has been called ‘The Derry Model’ for conflict transformation.⁸⁸

8.3 Through the peace process in Northern Ireland, a significant mediative capacity has developed within civil society to support processes aimed at helping parties move beyond conflict.⁸⁹ Looking at the Public Processions (Northern Ireland) Act 1998, which requires the Parades Commission ‘to promote and facilitate mediation as a means of resolving disputes concerning public processions’ (see Appendix 4), we think it was probably envisaged that the Commission would have a more ‘hands on’ role than it does. Early on in its history it certainly had the capacity for more engagement but rather than employ 12 part-time Authorised Officers it now has two case workers (see **Sections 4.6 – 4.9** above). These case workers concentrate on another duty of the NI Parades Commission, ‘to keep itself generally informed as to the conduct of public processions and protest meetings’.

8.4 The Northern Ireland model would suggest that it is important that the relevant authority, the Parades Commission, not only has the capacity to collect information and engage with parties but that mediative practice is a resource encouraged outside the authority. In conversations with those involved in mediation there is a reasonably commonly held view that good mediation practice in this area should be separate from the decision-making process (see also **Section 4.5** above). There are, however, some differences of opinion as to what information should or could be provided by the mediator to the relevant authority. What is important is that any decision over the use of that mediation process is agreed between all those engaged in it at the start of the process.

8.5 **The working group believe that an important part of improving relationships around processions and related protests is to develop significant capacity for**

⁸⁸ <https://museumoffreederry.org/introducing-the-derry-model/>

⁸⁹ Hamilton, M and Bryan, D (2006) ‘Deepening Democracy: Dispute System Design and the Mediation of Contested Parades in Northern Ireland’, *Ohio State University Journal on Dispute Resolution*. Vol.22 Issue 1, pp.133-187.

mediative practice, outside the Local Authority, that could be engaged in processes throughout the year. There were relevant case studies in Northern Ireland that should be examined. In addition, we are aware of ongoing work from the Centre for Good Relations in Glasgow that might be built upon.

- 8.6 We wish to underline again that resources spent around these practices could save money in policing in future years. Experience in Derry/Londonderry provides a clear example of this.

9. Political parties and a civic model?

- 9.1 This brings us to perhaps the most pertinent issues when comparing Scotland with Northern Ireland. As discussed above, the Parades Commission in Northern Ireland came into existence to deal with very high levels of conflict over parades, and it was felt at the time that the institutions which in other parts of the UK make decisions over processions (Scotland: Local Authorities, England and Wales: Police) would be placed under too great a strain. As such, an independent ‘civic’ model was chosen where individuals that broadly represent Northern Irish society, and with specific skill, knowledge and background, would make decisions (see **Section 1.5** above). It is worth noting that there has been considerable pressure on the NI Parades Commission with a number of reviews, discussed below. This has meant that the mechanisms in Northern Ireland have been constantly under review and this fact of itself has arguably stymied the potential for the Parades Commission to engage in long-term transformative work.

- 9.2 This model in Northern Ireland attempts to draw upon two forms of legitimacy, judicial and representativeness. It conforms to practices that are in some ways quasi-judicial and it involves a panel that attempts to represent the political ‘communities’ in Northern Ireland. On the other hand, it could be argued that it falls short on both these fronts – it is neither fully judicial nor is it connected directly to the democratic

processes of representation.⁹⁰ The Grand Orange Lodge in Ireland has been a constant critic of how the Parades Commission was set up and the processes that it has used.⁹¹

9.3 Despite the devolution of policing and justice powers to Northern Ireland in 2010, the Parades Commission for Northern Ireland remains a reserved matter.⁹² Since the Commission's establishment, there have been eight official reviews of parading issues, often also scrutinising the Commission's operation. These have included an internal review conducted by the Northern Ireland Office (1999-2000), two reviews by the Northern Ireland Affairs Select Committee (in 2001 and 2004-05), a review by Sir George Quigley (September 2002), and a NIO consultation on mediation measures for disputed parades (February 2005). In 2007, the Strategic Review of Parading Body was established. This was chaired by Lord Paddy Ashdown and included representatives of residents affected by parades and of the Orange Order. Then, in the aftermath of the Hillsborough Agreement of 5 February 2010 (which expressed a commitment 'to a new and improved framework fashioned by all stakeholders and maximising cross community support'), a Working Group was established to build on the Interim Report of the Strategic Review of Parading by considering:

- the procedures relating to the notification of parades and assemblies, the lodging of objections, and the facilitation of dialogue and mediation;
- the procedures relating to independent adjudication should mediation fail;
- the composition of an adjudicatory body (and the balance of lay and legal members);
- a legally enforceable code of conduct;
- the right to citizens to freedom from all forms of harassment.

⁹⁰ Hamilton, M and Bryan, D (2006) 'Deepening Democracy: Dispute System Design and the Mediation of Contested Parades in Northern Ireland', *Ohio State Journal of Dispute Resolution*. Vol.22 Issue 1, pp.133-187.

⁹¹ <https://www.newsletter.co.uk/heritage-and-retro/heritage/warning-from-senior-orangeman-on-formation-of-scottish-parades-commission-3395938>

⁹² Northern Ireland Act 1998, Schedule 3, para 10.

- 9.4 A consultation was launched by the Office of the First Minister and Deputy First Minister (OFMDFM) on a draft Public Assemblies, Parades and Protests Bill (2010). However, there was insufficient political consensus in relation to these proposals.
- 9.5 In December 2013, a new framework relating to parades was proposed in a document put forward by Dr. Richard Haass and Prof. Meghan O’Sullivan following a process of talks which they had been invited to chair between the parties in the Northern Ireland Executive.⁹³ The proposals involved the separation of mediation and adjudication functions through the establishment of two bodies, to be established on the basis of legislation in the Northern Ireland Assembly: The *Office for Parades, Select Commemorations, and Related Protests* (described as ‘an administrative, non-partisan, and non-judicial body with authority for accepting event notifications, facilitating community dialogue, and referring parties to outside mediators’). This office, having verified the completeness of received notifications, would then forward these to the *Authority for Public Events Adjudication*, an adjudication body for parades, select commemorations, and related protests. The document proposed by Dr Haass and Professor O’Sullivan at the end of 2013 included a request that the Secretary of State for Northern Ireland ‘takes steps to devolve authority and responsibility for parades, protests, and events to the new institutions called for in this agreement’, but this has not yet occurred.
- 9.6 In Scotland, legitimacy in the process resides in the democratic institutions of the Local Authority. Decisions are made by a committee often within the licensing remit of the Local Authority whilst in some areas there is a separate processions committee. When a committee is set up to make a decision it usually involves Councillors from a range of political parties in the Council. The sitting of a Processions Committee is a public event and evidence taken is not confidential. Importantly, if parties believe that decisions have been made that do not comply with the law, these can be appealed to the courts.

⁹³ [The Haass-O’Sullivan Report – Proposed agreement of 31 December 2013.](#)

- 9.7 **The working group heard some criticisms of the notification and decision-making process: (i) It has been noted that it is the police that seem to trigger this process (see also section 5 above); (ii) that it can be difficult to get councillors to sit on the processions committee, including a reluctance to sit on the committee due to some of the criticism they might receive including on social media; (iii) the ad hoc nature of the processions committee mitigates against long-term strategic consistency in decision-making; (iv) that political divisions over Independence and Brexit have created great fissures in the political institutions and this reduces trust in councillors' involvement in making decisions.**
- 9.8 **We should make it clear that we have no evidence of any particular issue with the decision-making process involving Councillors. We have no overall figures on how many processions end up with a Committee in each Local Authority area, although we were quite surprised how few times a Committee was convened, particularly in Glasgow. However, it is very clear that some of the parading organisations are highly suspicious of potential political interference in the process. Trust in the legitimacy of the process may be in decline, whether that lack of trust is justified or not.**
- 9.9 It is worth noting that irrespective of whether the decision-making body is the police, a civic body or a Local Authority, if there is a particularly heated political context then the institution involved will come under pressure and the legitimacy of the process questioned. The working group's assessment is that there are very good reasons to support the frameworks in both Northern Ireland and Scotland but that the key is to work towards a process that is broadly viewed to be fair and open, rights-based, and in a societal context that seeks to build relationships and transform conflict. Conflict and antagonism in society are inevitable especially as rapid social change takes place (and this conflict can manifest itself through processions and protests).
- 9.10 The working group has a suggestion that we believe is worth exploring. We note that the *Civic Government (Scotland) Act 1982* does not specify the way in which decision-

making within the Local Authority should be undertaken. Indeed, a recent fact sheet on the workings of Scottish Councils makes it clear that Local Authority can use different mechanisms of decision-making:

*'Councils can delegate most decision-making to committees or sub-committees of the council. Individual councils set out their arrangements for delegation to committees in their internal governance documents, such as Standing Orders, Orders of Reference or Schemes of Administration and Delegation. There is no requirement for councils to adopt a particular decision-making and scrutiny structure, it is a matter for each council to decide what is most appropriate for its particular circumstances.'*⁹⁴

9.11 The working group can see some considerable advantages in Local Authorities that are under particular pressure in terms of decisions over processions to develop an alternative model. This might include developing a standing committee on which sit a number of individuals drawn from civic society, appointed for a period of time to make decisions over contested processions. Such a mechanism has the following potential advantages: (i) it helps distance the decision-making process from, what may be viewed as, direct and controlling political influence; (ii) it makes a statement about broad civic engagement in the process of upholding the right of peaceful assembly and the rights of others impacted by processions; (iii) it allows a range of people with a range of skills and experiences to engage with a contested public arena; (iv) it allows for longer term consistency and strategies to be developed within the Local Authority, regardless of the political make-up of the Authority. It is important to remember that ultimately all decisions can be challenged in the courts.

9.12 The details of this proposal would need to be carefully thought through. For now we are just raising some possibilities. What would the relationship be with the Local Authority? Could the committee be chaired by a Councillor? Could the full

⁹⁴ <https://www.gov.scot/publications/local-authorities-factsheet/>

Council review or overturn the decision? We note by way of illustration that, in Northern Ireland, the important position of the Minister of Justice has been given to an MLA that is seen as non-aligned and has the widespread confidence of all the political parties. We make this suggestion alongside our proposals that the process in some Councils be better resourced in terms of engagement and information gathering.

9.13 We do not want to encourage the committee sitting any more times than it needs, since the process is one of notification not licensing. However, we do think that the committee could meet more often to review what has taken place and take a strategic view on the facilitation of processions.

9.14 Unlike the NI Parades Commission this decision-making body would remain accountable to the Local Authority. It could also retain a number of Councillor members. We would suggest that appointment of committee members is undertaken on a rolling and staggered bases providing consistency over time.

9.15 We would like to make clear, once again, that this proposal in no way suggests that we have any evidence of problems with decisions made by councillors or that we have identified specific problems with officials working in Local Authorities. In a number of cases our view was that the Local Authority was relying on very thorough work of officials, with extensive experience, that have been in post for a considerable length of time.

10. Road closures and 'TTROs'

10.1 We heard about difficulties surrounding the process, timeframe and resources involved in putting in place Temporary Traffic Regulation Orders (TTROs).⁹⁵ We note

⁹⁵ See also, 'Temporary Traffic Regulation Orders (TTRO) Case Study,' in HMICS, *Thematic Inspection of the Scottish Police Authority* (September 2019) p.29.

that this is a long-standing problem that took up a great deal of discussion in Rosie's 2016 review.⁹⁶ Many – particularly those involved in organising processions – welcomed the more recent agreement that the associated costs would now be covered by local authorities.⁹⁷

10.2 Like the applicable law in Scotland ([section 16A of the Road Traffic Regulation Act 1984](#)), [Schedule 3A of the Road Traffic Regulation \(NI\) Order 1997](#) in Northern Ireland establishes the power to close a road to facilitate a special event, to enable the public to watch it or to reduce the likely traffic disruption caused by it.⁹⁸ Importantly, however, 'public processions' are expressly excluded from the definition of 'special events' in the Northern Ireland legislation – so Schedule 3A cannot be invoked in relation to marches or parades⁹⁹ including the provision that allows the relevant authority to recover any costs incurred in connection with or in consequence of making an order.¹⁰⁰

10.3 Under international human rights law, State authorities have positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives. These duties may include blocking off streets or redirecting traffic.¹⁰¹ Moreover, '[r]equirements for participants or organisers either to arrange for or to contribute towards the costs of policing ... or other public services

<https://www.hmics.scot/sites/default/files/publications/HMICS20190926PUB%28acc%29.pdf>

⁹⁶ Rosie 2016, 3.69-3.91.

⁹⁷ Police Scotland and COSLA, *Position Statement on Marches, Parades and Static Demonstrations – Road Traffic* (2020).

⁹⁸ Inserted by section 6 [Roads \(Miscellaneous Provision\) Act \(Northern Ireland\) 2010](#). The relevant authority is the local council in which the road is located (unless it is a motorway in which case the Department for Infrastructure is responsible). A review of the 2010 law was initiated by the Department of Infrastructure on 27 July 2020 with a closing date for responses of 24 September. See further:

<https://www.theyworkforyou.com/ni/?id=2021-11-22.5.1> (Oral Answers to Questions, 22 November 2021).

⁹⁹ Contrast paragraph 1(3) of [Schedule 3A of the Road Traffic Regulation \(NI\) Order 1997](#) with [section 16A\(4\) of the Road Traffic Regulation Act 1984](#). Curiously, open-air 'public meetings' (whether related to a procession or not) are not excluded from Schedule 3A. Notably too, the provision in s.16A(3) of the legislation applicable in Scotland – that '[b]efore making an order ... the authority shall satisfy themselves that it is not reasonably practicable for the event to be held otherwise than on a road' – is not contained in the Northern Ireland legislation.

¹⁰⁰ Paragraph 4 of Schedule 3A

¹⁰¹ General Comment No. 37, Para 24.

associated with peaceful assemblies are generally not compatible with [the right of peaceful assembly under] article 21 [ICCPR].¹⁰²

- 10.4 It is clearly important to ensure that traffic is managed in such a way as to ensure the safety of all road users – including those exercising their right of peaceful assembly. Nonetheless, the Working Group was surprised to learn that TTROs were, in some cases, regarded as appropriate for even relatively small-sized processions.
- 10.5 We heard that the process of putting in place a TTRO was bureaucratic and time-consuming – often taking 21-days (and sometimes longer) of the 28-day notification period. As noted above, the possibility of undertaking such a process only arises in consequence of the inordinately lengthy 28-day notification process. This in turn potentially skews the process in a way that affords undue pre-eminence to traffic considerations.¹⁰³ Over-reliance on Section 16A Road Traffic Regulation Act 1984 thus risks instilling an understanding of the roads as being primarily for vehicular or pedestrian traffic and not also as spaces for participation.
- 10.6 In our view, traffic considerations should not occupy such a central place in the notification and adjudicatory processes. The powers of the police to impose temporary traffic regulations ought to be sufficient for the vast majority of processions that take place – and a review of the powers of the police to undertake short-term traffic regulation (including under the Road Traffic Act 1988 and the Road Traffic Regulation Act 1984) would be beneficial.
- 10.7 The working group welcomes the agreement on TTROs between COSLA and Police Scotland and agrees that the determination of the road traffic requirements of any march or parade must depend on the individual circumstances of the event. Moreover, measures relating to temporary traffic regulation should be agreed between the police and Local Authority in a way that protects the different rights

¹⁰² General Comment No.37, para 64.

¹⁰³ In a manner not dissimilar to the arguments put forward by the Hungarian authorities in [Patyi and others v Hungary](#) (2008), para 12.

engaged and also makes best use of public resources. **Nonetheless, drawing on the example of Northern Ireland, the working group also considers that public processions and related open-air public meetings could be expressly exempted from the category of 'special events' to which TTROs pertain.**

11. Strategic development, best practice and long-term institutional knowledge

- 11.1 One of the possible advantages of a better resourced process is that it can develop strategic approaches to problems that might be sustained over periods of time, particularly utilising outside resources for engagement, mediation and relationship building. In addition, it might allow for longer-term development of institutional knowledge and a sustained basis on which to develop best practice.
- 11.2 **We were also struck that Council Officers across the Local Authorities in Scotland dealing with processions seemed not to have many opportunities to share and learn experiences and we suggest that a process of information sharing and good practice is developed. This may be something that COSLA could develop in the future.**
- 11.3 **We were unable to obtain statistics from across Scotland that would allow us to examine the number of parades upon which conditions had been imposed, the numbers of parades that had been restricted or those that had been processed without going to a Local Authority committee and those that did go to Committee. We think that it would be a useful process to collect such information to provide a record of change over time. This might also be managed by COSLA.**
- 11.4 In terms of statistical data that ought to be gathered and collated, this should include at a minimum:
- the annual number of processions notified in a Local Authority area;

- the number of notified processions that the Local Authority regard as sensitive (because of their potential impact on other rights and freedoms);
- the number of times a Processions committee is convened;
- the number of decisions to impose conditions on processions and related protest meetings;
- the nature of conditions imposed – such as restrictions on route, timing, number of participants, exclusion of specific participants, music, banners and flags etc.
- the number of processions and protest meetings subject to a prohibition order.

12. Police resources and community ‘policing’

12.1 A police service in the UK is asked to ‘keep the peace’ and be arbiters of public order. They also work under the broad model of ‘policing by consent’. This lays heavy responsibility on a police service and, as can be seen from numerous examples (good and bad), policing crowds, processions and protests is a highly skilled job. Perhaps the experience most citizens have of the police is through the policing of large events. As such, public order policing, in some measure, defines the public’s view of their police. Even more importantly the policing of large events can involve decisions that have life and death consequences. The consequence of an event that goes wrong can be enormous.

12.2 It takes only a cursory view of the history of policing in Northern Ireland to understand why getting ‘public order policing’ right is so important. There is a large body of academic and policy research into public order policing and tactics used are regularly discussed in the news. Good public order policing requires experience, good resourcing, clear decision-making and clear mechanisms of accountability. Most police services should now routinely use mechanisms of de-escalation.

12.3 Public Order policing is expensive and resource intensive. There is an understandable tendency that commanding officers will want to feel that they have the resources to

deal with all potential scenarios. In the discussions the working group has had we have heard a number of people complain about 'over policing'.

12.4 We are not experts on policing, but we do have some observations. There is always a tension when policing large events between public order, public safety and policing with the community. Police officers never look less like they are working with the community than when they are on the streets working in full public order gear. And public order events themselves take resources from other aspects of policing. Again, this is a tension that all senior police officers are aware of.

12.5 We would like to examine this from another perspective which allows an alternative way of viewing policing. The Patten Review of Policing in Northern Ireland suggests that community policing is:

'7.3 ... the police working in partnership with the community; the community thereby participating in its own policing; and the two working together, mobilising resources to solve problems affecting public safety over the longer term rather than the police, alone, reacting short term to incidents as they occur.' (p.40)

12.6 What might 'the community thereby participating in its own policing' mean when looking at public order policing? Let us give three examples from Derry/Londonderry and then expand that to a broader policy basis:

- i. We have heard from the Apprentice Boys of Derry in Derry/Londonderry and in Scotland about the importance of training their own stewards. This was a proactive approach taken by the Apprentice Boys in Derry from about 2000 which in the longer term has played an important role in reducing policing required at their events. It also has the advantage of developing skills and

training amongst their membership that can be used by members in other arenas.¹⁰⁴

- ii. The Londonderry Bands Forum worked with bands and the loyal orders within the city to produce 'The Maiden City Accord'.¹⁰⁵ This document is introduced by its authors as follows:

Much of what appears in the Maiden City Accord is not new, but for the first time has been set out in a form that defines the role that each individual group is responsible for in relation to the structure, spectacle and management of each given procession, commemoration or parade. It has been identified that the values and dignity of the various historical events commemorated by the Protestant culture have been eroded by years of conflict, and as a group we have created the Maiden City Accord in order to restore these values and dignity back to the top of our priority.(p.1)

What follows in the document is a very clear articulation of when members of the marching organisations in the area expect of themselves and, importantly, what others should expect of them. Put another way, this is a group of citizens wishing to assert their rights to parade but also outlining the responsibilities that come with those rights.

- iii. We have discussed above the very difficult context around parading in Derry/Londonderry throughout the 1990s. Issues were overcome with significant efforts on all sides, with significant involvement of the business community and civic society and the use of a number of mediators over the years. This has been described as 'the Derry model' and is an example of citizens taking responsibility for the protection of rights without directly involving the institution of the police.¹⁰⁶

¹⁰⁴ Bryan, D (2007) 'The Anthropology of Ritual: Monitoring and Stewarding Demonstrations in Northern Ireland' in *Anthropology in Action*. Vol.13:1-2 pp.22-32.

¹⁰⁵ <https://londonderrybandsforum.com/resources/#maiden-city-accord>

¹⁰⁶ <https://museumoffreederry.org/introducing-the-derry-model/>

12.7 The working group has concluded that there are a number of ways in which communities, relevant groups and civic authorities can be resourced in order to reduce the need for public order policing. This is about our citizens being engaged in the rights and responsibilities that come with the right of peaceful assembly and not leaving the job of policing with one policing institution. In the longer term, such resourcing can be cost effective. It might include: training for stewards;¹⁰⁷ the resourcing of organisations to undertake steward training; funding for organisations to develop skills including in communication and engagement; the development of mediation practice across society; the involvement of citizens in decision-making and event facilitation; training in human rights and policing; support for political activism. Such funding offers a community policing alternative to the deployment of public order resources and thus potentially saves money. It also underpins the State's commitment to protecting the right of peaceful assembly and other rights and freedoms.

13. 'One size fits all'?

13.1 Our short-term review of the environment in which processions and protests are facilitated and regulated in Scotland has been limited in scope. We have undertaken this in 5 months and spoken to a small number of key groups and individuals. However, one thing that is very clear is that whilst there are considerable tensions over the facilitation of processions in some areas, most particularly Glasgow, there are other areas where there are few if any problems. This has suggested to us that there is no immediate need for wholesale change in the regulation of processions across Scotland. But there are some very significant issues in Glasgow and surrounding areas that arise from long-standing issues around sectarianism and a football sub-culture in the city into which issues of the future of Scotland and Brexit have fed. We have made it clear that divisions that exist in Scotland are not the

¹⁰⁷ Rosie 2016: 2.46-2.49

same, not as deep, as those in Northern Ireland but there are some indications of increased political antagonism damaging social cohesion.

- 13.2 **The Working Group has suggested a range of measures that could be acted upon in areas that they are needed. As such, we have avoided suggesting a ‘one size fits all’ model but instead suggested increasing capacity in particular areas to deal with the range of issues. So, for example, it could be that Glasgow City Council could work on some of these changes with the possibility of a review process after 3 or 5 years. If the review deems the changes successful, they could then be looked at by other Local Authorities as required.**

TERMS OF REFERENCE

In September 2021 a [question was asked](#) at First Minister's Questions in the Scottish Parliament about Scotland adopting a Northern Ireland style Parades Commission by James Dornan MSP. The First Minister responded that the Cabinet Secretary for Justice would give further consideration to this request alongside wider work to maintain the important balance of rights between peaceful procession and freedom of speech and the ability of people to go about their daily lives without feeling unsafe or facing harassment.

In response to this request, the Cabinet Secretary for Justice and Veterans tasked a [Short Life Working Group \(SLWG\)](#) to consider what can be learned from other models used in relation to the regulation of marches and parades and to consider whether any of this learning can be usefully applied in Scotland to improve the regulation of Marches and Parades.

Remit of the Facilitating Peaceful Assemblies in Scotland: Procedures and Best Practices – Short Life Working Group:

To identify whether there are any challenges involved in the running of marches and parades and the notification process in Scotland to achieve the right balance between the human rights of organisers/participants with those communities impacted by these events.

To consider how any challenges (identified) could be addressed, and the practical implications of making any changes, and make recommendations based on these.

Membership:

- **Professor Dominic Bryan (Chair)**, Professor at the School of History, Anthropology, Philosophy and Politics at Queens University Belfast, with a background in political anthropology; public ritual; public order and policing; ethnicity; nationalism and group identity; Irish history; and Orangeism. He was involved in the development of the Parades Commission in Northern Ireland and has given evidence in subsequent reviews of the Commission.
- **Lorraine Gillies**, Chief Executive of the Scottish Community Safety Network - a membership organisation that brings together representatives from across the community safety sector and is the strategic voice for community safety in Scotland. Experience with, and connections to, grassroots communities across Scotland and their representative organisations will ensure that the voices of communities are heard.
- **Graham Boyack**, Director of Scottish Mediation, the national body for mediation in Scotland which promotes understanding of the use of the many different types and

approaches to mediation and dialogue in conflict management and prevention as well as the ability to reach local agreements and positive outcomes in relation to marches and parades.

- **Dr Michael Hamilton**, Associate Professor in Public Protest Law, School of Law, University of East Anglia and previously Associate Professor (2009-12) and Acting Chair of the Human Rights Program (2011-12) at the Legal Studies Department, Central European University, Budapest. He has also contributed to numerous opinions on draft legislation dealing with public assemblies and was appointed by the Northern Ireland Office as human rights advisor to the 'Strategic Review of Parading' from 2007 to 2010.

MEETINGS

Meeting No.	Purpose/type of meeting/event	Group members in attendance	Guests in attendance
1	<ul style="list-style-type: none"> Introductory meeting to discuss the task and consider the way forward. 	Full Working Group and secretariat	None
2	<ul style="list-style-type: none"> Business planning meeting. 	Full Working Group and secretariat	None
3	<ul style="list-style-type: none"> Evidence gathering session focussing on previous work commissioned by the Scottish Government on marches, parades and static demonstrations. 	Full Working Group and secretariat	Dr Michael Rosie
4a	<ul style="list-style-type: none"> Evidence gathering session with Police Scotland considering the organising and running of marches and parades from their perspective. 	Full Working Group and secretariat	Chief Superintendent Mark Sutherland; Superintendent Emma Croft
4b	<ul style="list-style-type: none"> Evidence gathering session with the Centre for Good Relations considering the role of mediation and dialogue in delivering peaceful marches, parades and demonstrations, and the current work the CfGR is involved in. 		Abdul Rahim; Sam Tedcastle
5	<ul style="list-style-type: none"> Discussion on the Working Group's proposals for taking forward their task and develop understanding of the issues from the perspective of Scottish Government ministers. 	Full Working Group and secretariat	Cabinet Secretary for Justice and Veterans; Scottish Government officials
6	<ul style="list-style-type: none"> Evidence gathering session to discuss the role that mediation and dialogue has played in the organising and running of marches, parades and 	Full Working Group and secretariat	Brendan McAllister; Abdul Rahim; Sam Tedcastle

	demonstrations in Northern Ireland.		
7	<ul style="list-style-type: none"> Evidence gathering session with officials from Glasgow City Council to discuss the organising and running of marches, parades and static demonstrations from their perspective. 	Full Working Group and secretariat	Mairi Miller; Gordon Fulton
8	<ul style="list-style-type: none"> Business planning meeting to take stock of evidence gathered to date and identify further evidence sessions and next steps. 	Full Working Group and secretariat	None
9	<ul style="list-style-type: none"> Evidence gathering session with COSLA, meeting elected members to discuss the organising and running of marches and parades and static demonstrations from their perspective. 	Full Working Group and secretariat	<p>Cllrs: Kelly Parry, Laura Murtagh, Stephen Curran, Arthur Spurling, Angela Campbell, Annette Christie and Jim McMahon and COSLA officials Anil Gupta and Elisa Bevacqua</p>
10	<ul style="list-style-type: none"> Business planning meeting to take stock of evidence gathered to date and identify further evidence sessions and next steps. 	Full Working Group and secretariat	None
--	<ul style="list-style-type: none"> Observation of March – District 37 – silent counter protest Police briefing 	Full Working Group	N/A
11	<ul style="list-style-type: none"> To hear from the Orange Order about their experiences of organising and running marches and parades 	Full Working Group and secretariat	<p>Jim McHarg, Grand Master of the Grand Orange Lodge of Scotland Ilan McNeil, Executive Officer</p>
12	<ul style="list-style-type: none"> For Cllr Aitken to provide an overview of marches and parades notification process in Glasgow. 	Full Working Group and secretariat	Cllr Susan Aitken
13	<ul style="list-style-type: none"> Business Meeting 	Full Working Group and secretariat	None
14a	<ul style="list-style-type: none"> Evidence gathering on the Parades Commission system in Northern Ireland 	Full Working Group and Secretariat	<p>Peter Osborne Sean Murray Northern Ireland Parades Commission</p>
14b	Meetings in Belfast:		Mervyn Gibson

	<ul style="list-style-type: none"> Former Parades Commission Chair; Sinn Fein; Northern Ireland Parades Commission; Grand Orange Lodge of Ireland. 		
15	<p>Meetings in Derry:</p> <ul style="list-style-type: none"> Apprentice Boys of Derry; Londonderry Bands Forum; Bogside Residents; Derry Model, Conflict, Transformation and Peacebuilding Project. 	Full Working Group and Secretariat	Billy Moore Kenny McFarlane, Derek Moore, Brian Docherty, Steven Tolgrath, Donnacha McNiallias, and Maeve McLaughlin.
16	<ul style="list-style-type: none"> Evidence gathering of processes across Scotland via meeting with COSLA (Convention of Scottish Local Authorities) 	Full Working Group and secretariat	Gordon Fulton Mairi Miller Gerry Mahon Paul Guidi Richard Llewellyn Andrew Mitchell Michael Grenwell Claire Ferguson Elisa Bevacqua Graeme MacKenzie Geraldine McCann Michael Elsey Raymond Lynch
17	<ul style="list-style-type: none"> Business Meeting 	Full Working Group and secretariat	None
18	Evidence gathering on experiences of the marches and parades processes:	Full Working Group and secretariat	
a	<ul style="list-style-type: none"> Meeting Call it Out and BEMIS 		Janette Findlay and Tanveer Parnez.
b	<ul style="list-style-type: none"> Meeting Nil by Mouth and Sense Over Sectarianism 		Dave Scott and Mark Adams
19	<ul style="list-style-type: none"> Evidence gathering from the experience of Police Scotland 	Full Working Group and secretariat	Will Kerr and Mark Sutherland
20a	<ul style="list-style-type: none"> Meeting with Centre for Good Relations to discuss civic mediation and community impact. 	Full Working Group and secretariat	Sam Tedcastle, Abdul Rahim and Mike Waite.
b	<ul style="list-style-type: none"> Evidence gathering from the Apprentice Boys of Derry about their 		Keith Rutherford and Alistair Skene.

	experiences with the notification process.		
21	<ul style="list-style-type: none"> • Business Meeting 	Full Working Group and secretariat	None
--	<ul style="list-style-type: none"> • Observation of Orange Order Jubilee Parade in Edinburgh 	Lorraine Gillies and Graham Boyack	N/A
22a	<ul style="list-style-type: none"> • Meeting with Orange Order County Grand Masters to gather evidence of their experiences with the process in different local authority areas. 	Full Working Group and secretariat	Jim McHarg, Ian McNeil, Iain Hunter, Ian Brown, George Wilson, and Derek Menzies.
22b	<ul style="list-style-type: none"> • Meeting with Glasgow City Council to continue discussions on their experience handling the notifications process in Glasgow. 		Mairi Millar and Gordon Fulton.
23a	<ul style="list-style-type: none"> • Meeting with Cabinet Secretary for Justice and Veterans to update on progress of group work. 	Full Working Group and secretariat	Cabinet Secretary for Justice and Veterans
23b	<ul style="list-style-type: none"> • Meeting with Michael Rosie to discuss his experiences in the scoping and reporting of Scotland's marches and parades processes. 		Michael Rosie
24	<ul style="list-style-type: none"> • Meeting with Glasgow City Council to discuss initial thoughts of outlined recommendations linked to Council. 	Full Working Group and secretariat	Mairi Millar and Gordon Fulton.

APPENDIX 1

RELEVANT STUDIES OF MARCHES AND PARADES IN SCOTLAND

As a group it is important for us to begin with a clear understanding of the substantial body of work that has been done in recent years to assess, improve and review the notification process and procedures in Scotland. We, the SLWG are attempting to build on that work, which began in 2005.

2005

In 2005 Sir John Orr published his [Review of Marches and Parades in Scotland](#). It was the first full scale review of marches and parades undertaken in Scotland and Orr's recommendations were important in helping to move towards standardisation of the arrangements for such events across the country.

2006

Following Sir John's review [Guidance for Local Authorities](#) was published in December 2006 to assist local authorities following changes to march and parade legislation established by the [Police, Public Order and Criminal Justice \(Scotland\) Act, 2006](#).

2015

In 2012, the then Minister for Community Safety and Legal Affairs established the Advisory Group on Tackling Sectarianism in Scotland, this group commissioned research projects. In February 2015 the [Community Impact of Public Processions](#) was published alongside other research and incorporated into the [Advisory Group's final report](#) in June 2015.

2016

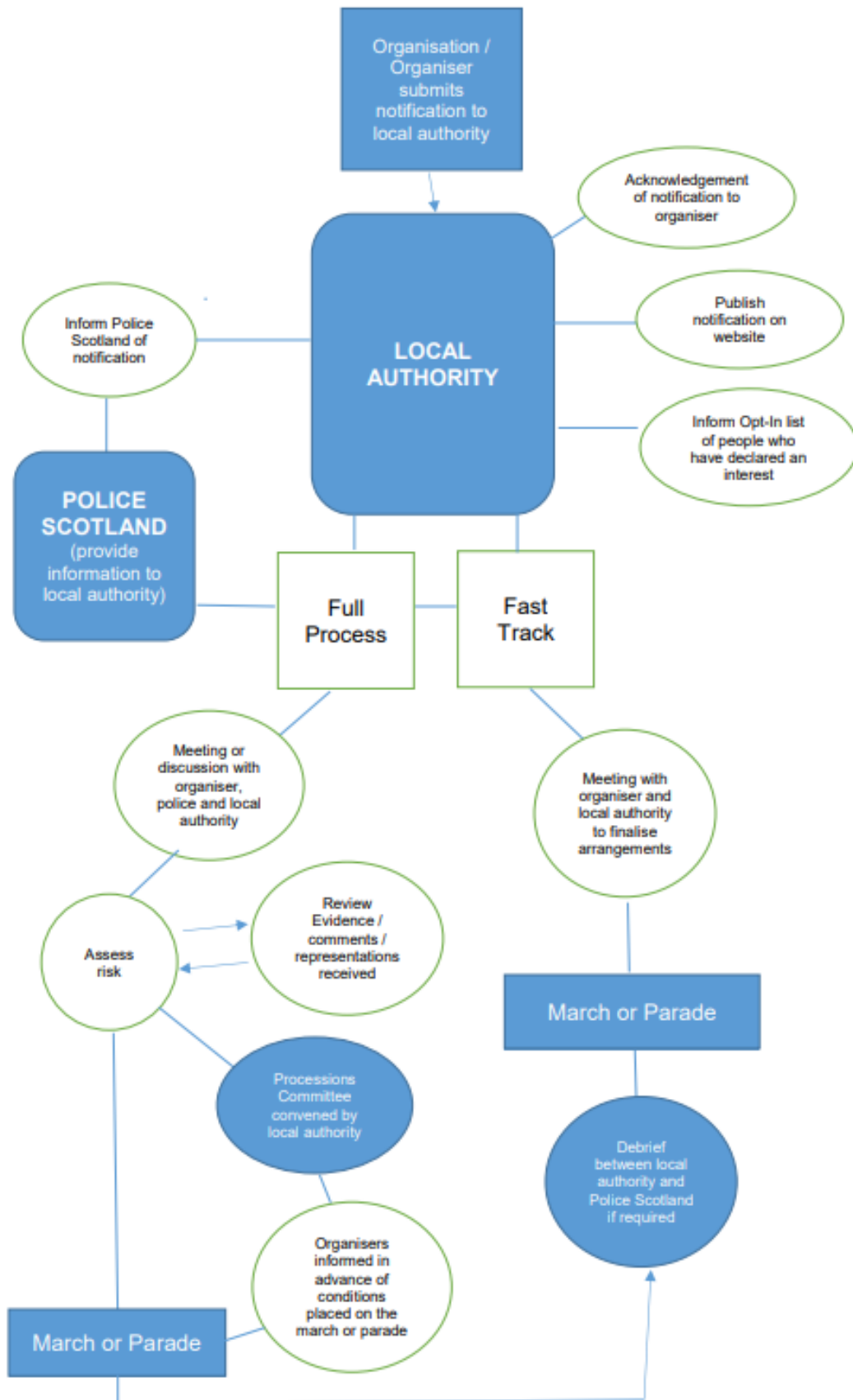
Following the Advisory Group final report, Dr Michael Rosie was asked by the then Minister for Community Safety, Paul Wheelhouse MSP to review and revisit the Orr report ten years on. Dr Rosie published his [Independent Report on Marches and Parades and Static Demonstrations in Scotland](#) in October 2016.

2020

Dr Rosie was then asked to review progress that had been made on recommendations from his 2016 report and identify any emerging issues. His [Review of 2016 Independent Report on Marches and Parades and Static Demonstrations in Scotland](#) was published in June 2020.

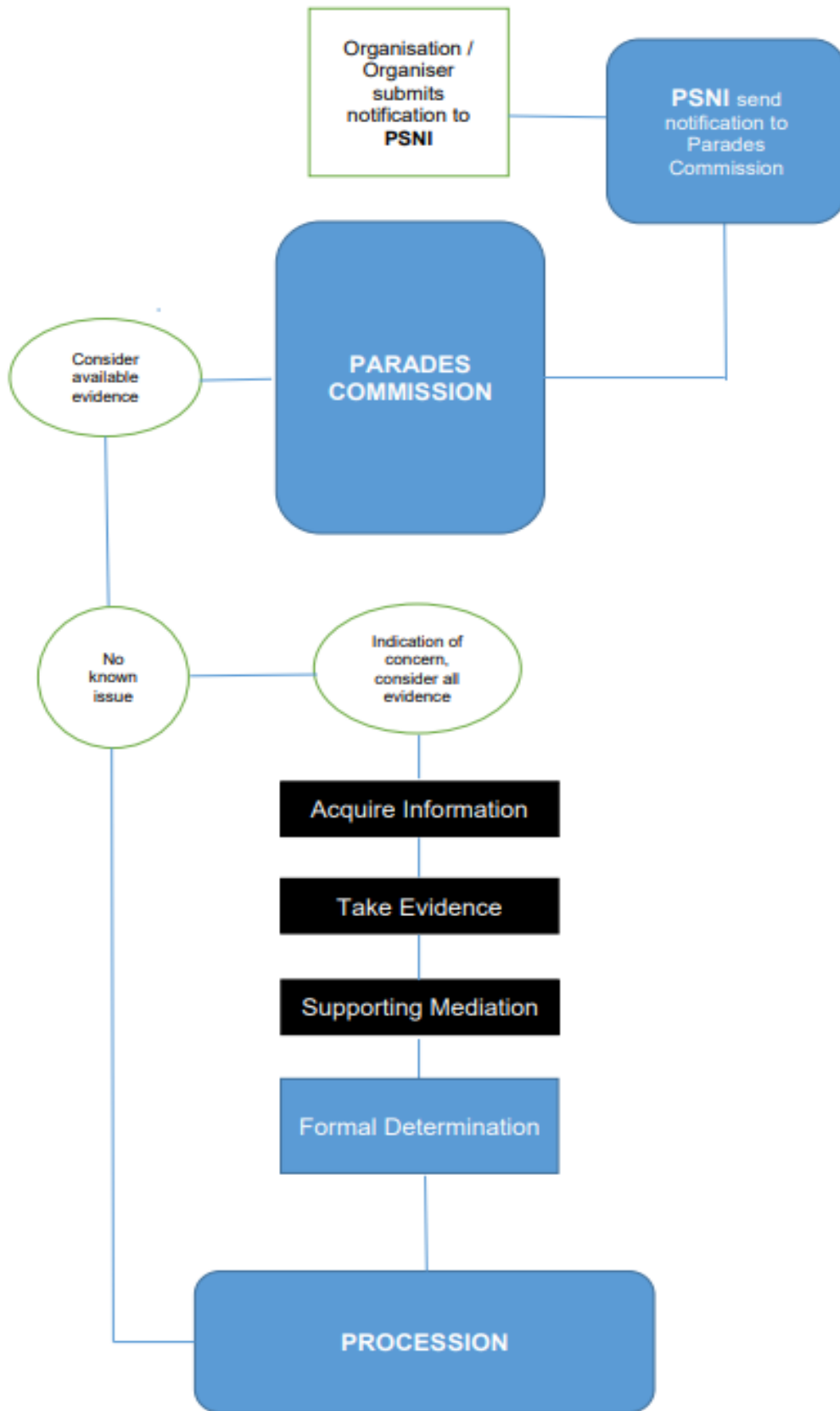
APPENDIX 2

SCOTLAND'S NOTIFICATION PROCESS



APPENDIX 3

NORTHERN IRELAND



APPENDIX 4

STATUTORY FUNCTIONS/DUTIES OF THE Northern Ireland PARADES COMMISSION as set out in Section 2 of the Public Processions (NI) Act 1998

“(1) It shall be the duty of the Commission –

- a) to promote greater understanding by the general public of issues concerning public processions;
- b) to promote and facilitate mediation as a means of resolving disputes concerning public processions;
- c) to keep itself generally informed as to the conduct of public processions and protest meetings;
- d) to keep under review, and make such recommendations as it thinks fit to the Secretary of State concerning, the operation of this Act.

(2) The Commission may in accordance with the following provisions of this Act –

- a) facilitate mediation between parties to particular disputes concerning proposed public processions and take such other steps as appear to the Commission to be appropriate for resolving such disputes;
- b) issue determinations in respect of particular proposed public processions and protest meetings.

(3) For the purposes of its functions under this section, the Commission may, with the approval of the Secretary of State –

- a) provide financial or other assistance to any person or body on such terms and conditions as the Commission may determine;
- b) commission research.”



© Crown copyright 2022

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-818-4 (web only)

Published by The Scottish Government, November 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1136662 (11/22)

W W W . g o v . s c o t