

Review of the 2016 Independent Report on Marches, Parades and Static Demonstrations in Scotland: Finalised March 2020

Published June 2020

Dr Michael Rosie

FOREWORD

In 2015 I was invited by the Scottish Government to provide independent advice on marches, parades and static demonstrations in Scotland. My Report in 2016 reflected wide-ranging and positive conversations with the three key parties in the marches and parades process – those seeking to march, parade or demonstrate and those tasked with facilitating and policing such events. That report concluded by emphasising the fact that most marches and parades in Scotland, including those seen by a wider public as ‘controversial’, are professionally conducted, facilitated, and policed.

In 2019 the Scottish Government asked me to review progress made on the recommendations from my 2016 report and to identify any emerging issues impacting on processes relating to marches, parades and static demonstrations in Scotland. Having done so, I am very happy to restate my earlier conclusions: the majority of such events in Scotland continue to be carried out with a strong sense of procedural goodwill and civic responsibility. The exceptions - where such events cause serious difficulties – are, thankfully, relatively rare, and these exceptions should not distract us from the wider, and positive, picture.

I am deeply grateful for the time, honesty and generosity of all those individuals and organisations who shared their experience and views with me. I hope that I have done justice to their expertise in this report. I am also very grateful to the Community Safety team at the Scottish Government for their professionalism and collegiality in supporting my work.

This report aims to contribute in a constructive manner to the good running of marches, parades and static demonstrations in Scotland. Such events offer a litmus test of our democracy: the freedom to assemble and express opinion, whilst respecting the freedoms and rights of others, is a difficult balance to achieve. The aim must always be the best achievable balance between the rights of those assembling and marching, and the rights of the wider communities they impact upon. Rights never can, nor should, be absolute: they must always take into account the rights of others.

My conclusions to this report echo those of my Report of 2016. In particular I emphasise the crucial importance that ‘the good relations, constructive dialogue and trust built up between parading organisations, local authorities and the police [should] be built upon further and not lost’.

Dr Michael Rosie
Senior Lecturer in Sociology, University of Edinburgh

EXECUTIVE SUMMARY

The findings and recommendations contained in this report are the outcome of discussions between Dr Michael Rosie and a range of interested parties, including march and parade organisers, local authorities, and Police Scotland. These discussions took place face to face, by telephone, and via email. This report reflects the views, opinions and experiences emerging from those discussions and from additional observation and research conducted by Dr Rosie.

The aim of this report is to assess progress made against the recommendations of the *Independent Report on Marches, Parades and Static Demonstrations in Scotland* (2016) and to identify any recent issues which have impacted on the relevant processes.

This report echoes the key conclusion of the 2016 Report: the processes involved mostly work well, and most marches, parades, and static demonstrations are conducted, facilitated and policed with good will and professionalism,

Progress against the 21 recommendations made in 2016 are mixed, and further recommendations are made, mainly in repeating calls for greater clarity on some key issues, and increased dialogue to strengthen - or indeed repair - relationships which, in some parts of Scotland, have become strained and, in some cases, seriously damaged.

RECOMMENDATIONS

There are several recommendations in the 2016 Report where no discernible progress has been made, although similar issues were raised in this review. In light of these:

- (a) The Scottish Government should look to the previous recommendations on static demonstrations (recommendation 3.6) and on the legal definition of public assembly (3.7) and consider whether any further discussion on these issues is necessary.
- (b) Local authorities should ensure that their websites are fit for purpose – and for statutory obligations – in terms of recommendations made in the 2016 Report (namely 3.58 and 3.62). Most local authorities have made good progress on this, whilst others have made little or none. The Scottish Government should further review progress on this in 2021.
- (c) The Scottish Government should refresh its guidance to local authorities (and a wider public) in light of the agreement reached between COSLA and Police Scotland on Temporary Traffic Regulation Orders (TTROs). That guidance might also, usefully, provide advice on the types of objections local authorities could take into account when making decisions about marches and parades. The guidance should be framed in light of human rights and of statutory Public Sector Equality Duty.

Events since 2016 have also highlighted other areas where existing policies could be bolstered by small (but significant) shifts in how they are put into operation:

- (d) Local authorities should give some thought on how to encourage organisers to voluntarily notify their intention to hold a static demonstration or assembly and ensure that a clear route for contact is in place.
- (e) Local authorities should consider whether a concise summary of decisions made between organisers, Police Scotland, and local authorities in the process of dealing with the notification can routinely be made public. This would give transparency and legitimacy to the processes in facilitating marches and parades that are often unseen. The refreshed Scottish Government guidance (see (c) above) should highlight this as best practice.
- (f) It is necessary to recognise the considerable costs that public bodies, not least Police Scotland, can occasionally face in facilitating marches and parades. This report heard, in particular, of the impact on staffing resilience and morale for Police Scotland over events in Glasgow and it is important to note these. It may be useful to consider whether other agencies – such as traffic/parking wardens or community enforcement officers - could be co-opted into the more routine

aspects of policing parades (e.g. managing traffic). This may not reduce the financial cost of facilitating a march or parade but it might help to ensure that conventional and tactical officers are freed up for other policing duties. Police Scotland could initiate a discussion on this, liaising with local authorities/COSLA and other agencies in the first instance, on what powers might be delegated, for what purpose, and how this might be achieved.

- (g) It seems clear that there is a particular burden on public resources when relationships between the key parties to marches and parades are under strain. Investment in 'fostering good relations' at local levels will do much, in the medium to long term, to improve the resilience of these relationships, and to build (in particular with parade organisers) trusted channels of discussion and negotiation. Building such relationships should be seen as the responsibility of all parties to a march or parade, organisers, police, and local authorities. Whilst fostering good relations between individuals and groups across protected characteristics is a statutory requirement under the Public Sector Equality Duty, it should also be seen as best practice in all situations. Where relationships around marches and parades have been damaged or eroded, the local authority should strive, in the first instance, to repair them.

SECTION 1: BACKGROUND AND REMIT

In 2012, the Scottish Government appointed an Advisory Group on Tackling Sectarianism in Scotland ('the Advisory Group') to provide independent, impartial advice on developing work to tackle sectarianism in Scotland. The Advisory Group published its Final Report in 2015.

The Advisory Group found that Loyal Order and Irish Republican parades are perceived as amongst the important contributors to sectarianism in contemporary Scotland - though by no means the most important – and that many Scots are opposed to them. Despite widespread negative perceptions of such parades, research commissioned to inform the Advisory Group found that attitudes around, and experiences of, such parades were complex. There was little evidence of widespread public misbehaviour (let alone serious disorder and criminality) in and around the parades observed.

At the conclusion of the work of the Advisory Group, the Scottish Government tasked one of its members, Dr Michael Rosie, with investigating further the issue of marches and parades. This arose from the seeming difference between the highly negative public perception of many parades, and the evidence that they were, in general, well-managed and orderly.

The remit of that original study was as follows:

- To assess the current processes and procedures for arranging and running marches, parades and static demonstrations in Scotland from the perspectives of those seeking to march, parade or demonstrate and those who need to authorise and police such events.
- To identify the issues arising from these, both positive and negative, and to do so in light of the changes since the Review of Marches and Parades in Scotland in 2005; the report on the Community Impact of Marches and Parades in 2015; and the report on Sectarianism and its Consequences by the Advisory Group on Tackling Sectarianism in Scotland in 2015.
- To report to Scottish Ministers in early 2016 setting out recommendations for any actions identified to achieve the correct balance of rights between those who wish to march, parade and demonstrate and the communities that these events impact upon: this can include the sharing of best practice from events such as those recognised as having a positive community impact.

Contributors to the 2016 study were drawn from three of the key parties to any march or parade: the police, the local authority, and the parading organisation itself.

In 2019 the Scottish Government's Cabinet Secretary for Justice, Mr Humza Yousaf, tasked Dr Michael Rosie to review progress made upon his 2016 recommendations and to identify any issues emerging since 2016.

The remit was to:

- Review progress made against each of the 21 recommendations contained in the 2016 Report, identifying possible barriers to progress and highlighting best practice;
- Engage with key stakeholder and interest groups including, but not limited to, local authorities, march/parade/demonstration organisers, Police Scotland and community representatives, to gather evidence on the progress, or otherwise, made since the publication of the Report;
- Identify any issues emerging since 2016, both positive and negative, that have impacted on the processes relating to marches, parades and static demonstrations. This can include identifying best practice and areas where improvements can be made;
- Assess the existing legislation, guidance and processes relating to marches, parades and static demonstrations, specifically considering whether the legislation, guidance and processes are fit for purpose and, if not, how these can be improved, taking particular account of community impacts. Specific consideration should be given to the evidence-gathering and decision-making processes can be improved while being mindful of existing statutory responsibilities and human rights frameworks; and
- Report the findings of the review to Scottish Ministers by the end of 2019, setting out progress made and any additional recommendations that could further benefit the facilitation of marches, parades and static demonstrations.

Bodies responding to/represented in consultation

- Apprentice Boys of Derry
- Argyll & Bute Council
- Convention of Scottish Local Authorities
- Dumfries & Galloway Council
- East Ayrshire Council
- East Dunbartonshire Council
- Edinburgh City Council
- Equality and Human Rights Commission (Scotland)
- Falkirk Council
- Glasgow City Council
- Grand Orange Lodge of Scotland
- Highland Council
- Inverclyde Council
- Moray Council
- North Ayrshire Council
- North Lanarkshire Council
- Police Scotland
- Renfrewshire Council
- Scottish Community Safety Network

- Scottish Human Rights Commission
- Scottish Police Authority
- Scottish Police Federation
- Shetland Islands Council
- South Ayrshire Council
- South Lanarkshire Council
- West Dunbartonshire Council
- West Lothian Council

SECTION 2: RELEVANT DEVELOPMENTS 2016-2019

There have been three key developments in Scotland's experience of marches and parades since 2016. The first and most widely reported of these are rising tensions around Loyal Order parades and subsequently around Irish Republican marches in Glasgow. This has seen some public disorder, a court case, the prohibition of some parades, and has required – at times - a very substantial policing presence.

The second of these developments has been an increasing number of marches connected with support for, or opposition to, a second Scottish Independence Referendum and the likelihood of increasing numbers related to 'Brexit'. By and large these marches have passed off very successfully, but some have raised serious issues 'behind the scenes' and considerable difficulties in planning and ensuring safety for local authorities and for Police Scotland. These issues have led to criminal charges but received relatively little by way of media attention.

The third development is, to some degree, related to both the previous ones. There have been a number of counter-protests to Loyal Order, Irish Republican and pro-Independence parades. The facilitation of these complicate planning and operational issues and may have potential consequences for public order. For the most part these static demonstrations have been peaceful and orderly, but there have been occasions where they have presented concerns or developed into disorder.

These recent issues will be reflected upon further in the final sections of this report after a consideration of the progress made on the 21 recommendations in the 2016 Report. Before doing so it is worth exploring these developments carefully.

Glasgow

Glasgow has seen the most marked conjunction of these three developments. A sectarian assault on the parish priest of St Alphonsus Church by a follower of the city's main Orange parade in July 2018 provoked heightened tensions, particularly in the East End of the city. Routes past two Catholic churches, St Alphonsus on London Road and the linked St Mary's on Abercromby Street, became highly contentious. For some people any Loyal Order parade past these churches after the assault on Canon White would be a flagrant provocation; for others this was creating a 'no-go' area and punishing organisations for the criminality of an individual they had no connection with.

One of the less appreciated aspects of this difficulty in the East End was that the route past St Alphonsus Church was not a 'traditional' one for the Loyal Orders. Historically their preferred route from the Bridgeton/Dalmarnock area into the city centre was via the Gallowgate – however, there were public order issues related to

that route and on police request some years ago the route was changed to London Road. The area, then, has some 'history'.¹

As concerns over routes in the East End mounted some small counter-protests were held outside St Alphonsus and St Mary's. A protest group – *Call It Out* – was formed which called for the re-routing of all Loyal Order parades away from Catholic Churches. In May 2019 an Orange Order parade went past St Alphonsus. The *Call It Out* counter-protest directly outside the church was relatively large – about 200 persons – and a larger than normal number of 'followers' accompanied the parade on the pavement opposite. The police operation that day was very substantial, requiring a large number of both conventional and tactical officers, as well as a mounted section. Police Scotland noted that the same march in previous years had required 11 conventional officers: on this occasion over 100 officers, many with specialist training and equipment, were deployed. The mood was very tense indeed, with rumours of football hooligans gathered in local pubs. Police later reported some sectarian insults directed towards the protestors, though there was no disorder.

Four parades with proposed routes past St Mary's Church were notified for the first weekend in June 2019, two from the Orange Order and two from the Apprentice Boys of Derry. Given the tensions in May, the Public Processions Committee of Glasgow City Council imposed a condition that the routes should be amended to avoid Abercromby Street and St. Mary's Church. The four notifiers appealed this decision and their conjoined case was heard in the Sheriff Court on 31 May 2019. Sheriff Reid dismissed the appeal (see section 2 – 'The Reid Opinion' below).

Around this time another protest group – *Scottish Protestants Against Discrimination* – emerged calling for the end of what they perceived as 'no-go' areas in the city. A voluntary re-routing by the County Grand Orange Lodge of Glasgow took their Boyne parade away from St. Alphonsus church in July 2019, but community tensions manifested themselves at an Irish Republican parade down Abercromby Street in late July. A counter-protest had gathered, causing police to temporarily halt the parade whilst extra resources were called in. Subsequent social media posts relating to the flute band inflamed the situation further. On 30 August an 'Irish Unity' march, organised by another Irish Republican flute band faced a substantial Loyalist counter-protest in Govan, leading to widely publicised scenes of disorder.

In response to the Govan disorder a Glasgow City Council spokesperson was reported as saying:

The scenes in Govan tonight - and those we have seen elsewhere in the city on too many occasions in the last year - are unacceptable. The Council is clear that the law expects it to facilitate public processions; including those that some people oppose or find offensive.

¹ See, for example, *The Herald* 06 August 2003, <https://www.heraldscotland.com/news/12536177.police-seek-to-re-route-orange-march-fear-of-violence-in-gallowgate-prompts-letter-to-council/>

However, this cannot continue to be at the expense of the overwhelming majority of Glaswegians, who want nothing to do with these marches, or counter-protests.

The city needs and wants fewer marches. We are prepared to consider any action that will protect communities from morons intent on bringing mayhem to the streets of our city.²

The following weekend, on 7 September, there were two further Irish Republican marches in Glasgow. Both attracted large counter-protests around the Broomielaw district and required a very substantial, perhaps unprecedented, level of policing. At the second counter-protest pyrotechnics were thrown, injuring one police officer. Later media reports suggested that the costs to Police Scotland to provide 500 specialist public order officers was around £300,000, with additional costs for conventional officers, and helicopter, mounted and river support.³

Concerns about the increasing tensions in Glasgow were marked, with Cabinet Secretary for Justice, Mr Humza Yousaf, noting calls for legislation to curb public disorder:

It does frustrate me, quite a lot frankly, that we are having to talk about legislation for disorder that is committed by grown men in 2019 in a multi-cultural city like Glasgow, when they are fighting battles of centuries gone by.

I think the fact you have to think about legislating to stop these individuals from committing that disorder is a pretty depressing state.⁴

The weekend of 14 and 15 September saw six parades scheduled, five relating to Loyal Order or related organisations, and one to an Irish Republican organisation. On 11 September these parades were called, at short notice, to a meeting of Glasgow City Council's Public Processions Committee and prohibited. Some media suggested that the Local Authority were seeking to introduce a 'moratorium' or 'blanket ban' on Loyal Order and Irish Republican marches in the city.⁵ In response to the prohibitions, and to suggestions of further bans, protestors gathered – without incident - outside the City Chambers in support of the Loyal Orders.

Notably, at this high point in tensions around marches and parades in Glasgow, neighbouring South Lanarkshire seemed to have no such problems. With Loyal Order parades prohibited in Glasgow, the Orange Order paraded in nearby Rutherglen without incident or controversy.⁶

² See, for example, *The Scottish Sun*, 31 August 2019.

<https://www.thescottishsun.co.uk/news/4665684/glasgow-govan-riot-republican-loyalist/>

³ BBC News, 11 September 2019. <https://www.bbc.co.uk/news/uk-scotland-49661504>

⁴ BBC News, 10 September 2019. <https://www.bbc.co.uk/news/uk-scotland-49651139>

⁵ See, for example, *The Scottish Sun*, 12 September 2019.

<https://www.thescottishsun.co.uk/news/4712577/glasgow-loyalist-republican-marches-all-banned-council/>

⁶ See *The Herald*, 13 September 2019. <https://www.heraldscotland.com/news/17901236.orange-march-allowed-day-protest-glasgow-march-ban/>

Four parades were planned for Saturday 21 September, most notably the Pride of Govan flute band parade, one of the largest 'band parades' in the annual calendar, with approximately 800 participants. On this occasion no prohibitions were made, although the Local Authority appeared to have wished otherwise:

The Council has been placed in an impossible position in relation to the parade in Govan.

Police Scotland has said that, should the procession not go ahead, many of the 800 people due to take part will react angrily - which could lead to violence and a significant impact on the local community.

We deeply regret that the wider community in Govan will be subject to this disruption.

However, police have made it absolutely clear that this could be made worse if these people are not allowed to march.⁷

Police Scotland, on the other hand, took a more nuanced position with Assistant Chief Constable Bernard Higgins explaining a careful balancing of rights:

Our view is that if the processions were banned, some form of protest and disorder could still take place and the policing profile for Saturday would therefore be similar.

If the processions go ahead it would allow us to continue to engage with known organisers to ensure balanced rights were upheld and to police the events under the conditions agreed by the Council.

I need to appeal to people who plan on taking part in processions or counter protests to do so peacefully. We will have a range of policing resources, including a range of specialist assets, in attendance and will take any necessary action against anyone causing disruption.

The decision to amend the route or the timing, or to prohibit any procession is a matter for the relevant local authority.

Police Scotland is required to assist Councils to make informed decisions by making appropriate representations on notifications which could potentially significantly risk public safety, disorder, damage to property or disruption to the life of the community.⁸

The parades passed off without any difficulty, and there were no counter-protests. It should be noted, however, that senior figures in the Loyal Orders felt that the Local Authority's statement had served to sharply increase tensions at a point where there had been meaningful inter-party discussions on the need to reduce such tensions.

⁷ BBC News 19 September 2019. <https://www.bbc.co.uk/news/uk-scotland-glasgow-west-49760473>

⁸ BBC News, 21 September. <https://www.bbc.co.uk/news/uk-scotland-glasgow-west-49780309>

Tensions in the city abated thereafter, but concerns persist that the underlying issues remain unresolved and that a third ‘marching season’ marked by disorder would do Glasgow great harm, not least in terms of community relations, of the city’s reputation, and the strain on policing resources.

Glasgow Review

Glasgow City Council had already begun a review of their Policy and Code of Conduct for Marches and Processions, but events in the latter half of 2019 required a wider response. The Local Authority, therefore, folded that review and instead established a Councillor-led and wide-ranging exercise.

In the Report to Council by the Council Leader, Ms Susan Aitken, it was clear that a ‘moratorium’ had been considered but was found to have no legislative basis:

2.5 ... the Chief Executive was asked to consider all options, including a moratorium on all such parades, to allow time for all stakeholders to work together to find a long-term solution. On the question of a moratorium the legal advice received is that there is no current legislative basis for the Council to impose a moratorium on processions. Therefore, whilst the proposed review is ongoing and pending any changes that may be recommended or made to the Policy, Code or indeed legislation, the Council will continue to scrutinise every notification for a procession against all available information from officers and Police Scotland before determining whether it can go ahead with or without condition(s), or should be prohibited.

In light of the events in the city:

3.2 ... it is considered that a more fundamental review of the Policy and the Code of Conduct, including current and potential legislative powers, is required to look at the balancing of the rights of assembly with issues such as disruption to the community, including those living, working and visiting there, disruption to businesses, anti-social behaviour, violence, public and resident safety, and cost.

3.3 A key issue will be the cumulative impact that the number and frequency of processions have on areas and to identify what steps can be taken, working with those related organisations, to address this.

3.4 This extended review will build on what has been done to date and provide an opportunity for local residents to let us have their views on the impact of processions through consultation, but will also involve focus groups, interviews, workshops and other forms of direct engagement with a wide range of stakeholders, including importantly, procession organisers, community representatives, public agencies, transport providers and businesses.⁹

⁹ <https://www.glasgow.gov.uk/Councillorsandcommittees/viewDoc.asp?c=P62AFQDN0GZ3DXUTDX>

The Glasgow review is expected to report in Spring 2020 – and will offer an in-depth and relatively localised perspective. Rather than needlessly overlap with that exercise, therefore this review will offer a broader and wider lens and consider issues across Scotland.

The Reid Opinion

A further Glasgow development of relevance to all marches and parades was the Reid Opinion issued on 1 October 2019 and relating to an appeal by Loyal Orders against a re-routing of their parades away from St Mary’s Church in Glasgow (see section on ‘Glasgow’ above). The opinion runs to 81 pages and considers very closely many aspects of the case.¹⁰ The full opinion is freely available, but a short summary is useful and helps tease out some important points of policy that the opinion illuminates.

In brief the Loyal Orders (‘the pursuers’) had claimed that the re-routing of their parades away from St Mary’s Church on Abercromby Street was an unreasonable restriction on their freedom of peaceful assembly under Article 11 of the European Convention of Human Rights (ECHR). For Reid the crucial question was whether the action of ‘the defender’ [Glasgow City Council] undermined the ‘essence’ of the pursuers’ Article 11 rights. Since there was no specific argument presented for the particular route notified (beyond that parades had taken it for the previous 15 years), then Reid saw no unreasonable restriction on the aims of the parade by a ‘minimal’ change of route:

Nothing was offered by the pursuer to shed any light on why this procession had any interest whatsoever, still less any reason, preference, purpose or need, to follow any particular route, still less to march in proximity to St. Mary’s Church ... in my judgment it follows logically that the precise route must be a matter of irrelevance and immateriality to the pursuer’s procession. (#64, pp27-28)

In these circumstances, Reid’s opinion was that:

... the [Local Authority’s] re-routing of the procession is properly characterised as *de minimis*. It does not strike at the essence of the pursuer’s supposed right of assembly as such.

(#58, p24)

¹⁰ Sheriffdom of Glasgow And Strathkelvin at Glasgow, *Note by Sheriff S Reid Esq. in the Summary Application Under section 64 of the Civic Government (Scotland) Act 1982 at the instance of Apprentice Boys of Derry, Bridgeton (Pursuer) against Glasgow City Council (Defender)*, [2019] SC GLA 80 <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2019scgla80.pdf?sfvrsn=0>

Further, for Reid it was important to distinguish between a restriction on a right to march *per se*, and a restriction on the precise manner of *how* that right is facilitated and exercised:

... it is legitimate to distinguish between, on the one hand, a restriction on Convention Rights to assemble (or march) and to express one's views publicly and, on the other hand, a restriction on the manner in which those rights are exercised.
(#61, p26)

One of the most important points made by Reid is that the 'interference' of the re-routing was (in his opinion) necessary and proportionate because of the *specific context* of the proposed processions. It was the specificity of the two twinned Churches of St Alphonsus and of St Mary's being the parochial charges of the priest assaulted in 2018; the specificity of incidents at the parade passing St Alphonsus in May 2019; and the specificity of a police report noting high tensions around the parades and their proposed routes, that undergirded the Local Authority's actions:

... the re-routing of the procession is plainly directed at achieving a number of the permitted legitimate aims listed in Article 11(2), ECHR namely, preventing 'disorder', preventing 'crime' and at protecting the 'rights and freedoms of others'. In this context, it can be inferred that the 'rights and freedoms of others' would include the rights of churchgoers (including the parish priest) to enter and exit St Mary's Church, and to worship there, peacefully and unimpeded by disruption ... The conduct which is at the core of the defender's decision (as disclosed in the Chief Constable's submission) is apprehended criminality or disorder aggravated by religious prejudice. That particular kind of aggravated criminality or disorder is of a uniquely pernicious nature. It is aptly described as being disruptive of 'the life of the community' in terms of section 63(8)(a)(iv) of the 1982 Act.¹¹
(#71, p30)

This point is a crucial one since it identifies that local authorities, in considering parade notifications must take each case upon their own merits. There is little – if any – room in such considerations for 'blanket bans' or enforced 'moratoria'. Nor is there room for directing parades away from particular routes unless the *specific* context of the parade and the route at the proposed day and time justifies it. The section of the 1982 Act referred to by Reid runs as follows:

63 (8) The considerations to which the local authority shall have regard when deciding whether to prohibit the holding of a procession or impose conditions on it under this section shall include -

- (a) the likely effect of the holding of the procession in relation to—
 - (i) public safety;
 - (ii) public order;

¹¹ That is the *Civic Government (Scotland) Act 1982*

- (iii) damage to property;
- (iv) disruption of the life of the community.¹²

The relevant sub-section here is (iv): ‘disruption of the life of the community’. Here Reid appears to set a high bar for such disruption, both in its nature and likelihood. In the specific context and recent history of *that* route for *that* purpose the Police Scotland view was that ‘criminality or disorder aggravated by religious prejudice’ was likely to ensue, and that could be mitigated by a re-routing which did not undercut the Article 11 rights of the pursuer.

Other marches and parades

Another development in recent years has been the emergence, or re-emergence, of other issues which have produced marches, often with a major rally at their conclusion. Key amongst these is Scottish Independence for the simple reason that pro-Independence rallies have attracted very large numbers of participants (and counter-protests of a small and modest character). The challenge of these marches lies not in their character or in the conduct, or in the likely conduct, of participants, but in the capacities and approach of some of the organisers. The groups notifying parades, including some of very significant size, may themselves be fairly small and inexperienced in organising large and complex events. Such groups often find it exceptionally difficult to plan sufficient stewards: as a rule of thumb, for a large march and rally, a ratio of one steward per 20 participants might be reasonable, though many local authorities routinely advise a ratio of 1:10. Even at the higher ratio, a march of, say 10,000 persons would require 500 stewards briefed in the arrangements of the day and in what their duties entail.

Pro-independence rallies have been relatively large, bringing high numbers of people to both cities and towns across Scotland. As some examples, the organisation ‘All Under One Banner’ (AUOB) have recently mobilised marches in Galashiels (organisers claiming that 5,000 persons attended), Oban (claimed 7,000), Aberdeen (claimed 12,000), Glasgow (claimed 100,000), Edinburgh (claimed 200,000). Police estimates of numbers vary very significantly – for example the event in Glasgow was estimated to be 35,000 at most, in Aberdeen around 5,000, and some reported that the march in Oban may have been less than 2,500. This is not merely the familiar issue of over- or under-inflation of estimates: predicted numbers will play a role in forward planning for both police and local authority who must consider how to safely facilitate not simply the march or parade, but also the broader area and the wider public that it will march through.

In practice, some marches, because of their ‘open’ nature and the unknowability of factors such as the weather, are very difficult to predict. As one example, the Educational Institute of Scotland (EIS) held a march and rally in Glasgow in support of their industrial action in October 2018. Their march left Kelvingrove Park to finish with a rally at George Square. The turnout was far higher than expected – perhaps

¹² <http://www.legislation.gov.uk/ukpga/1982/45/section/63>

as many as 30,000 persons - and took 2 hours to clear the park.¹³ The event was a great success but was, in a technical sense, under-stewarded. The EIS is, of course, a large organisation and many of those participating would have been members, but organisers would have found it exceptionally difficult to produce extra stewards at immediate notice.

With much smaller organisations, far more loosely affiliated in terms of membership, mustering sufficient stewards even for marches where the *expected* numbers of participants turn up is an exceptional challenge. Facilitating such organisations' ambitious plans is a substantial challenge to the public authorities, one often obscured from public view by the colourful and successful parade itself. In other words, the disruption caused by such events are 'administrative', unseen, and, perhaps, sometimes quite unintentional. These disruptions have led to several criminal charges being brought for failing to adhere to conditions laid down by the relevant Local Authority. At an AUOB march in Glasgow, city authorities had required that the start time be brought forward so as to better manage the impact of the parade on the city centre and on traffic flows. On the day the march set off almost 3 hours after the time stipulated, at around the time the organiser had originally asked for. The organiser was subsequently charged with contravening Section 65 of the Civic Government (Scotland) Act, 1982.¹⁴ The same organiser was subsequently in contention with South Ayrshire Council, where AUOB refused to apply for an entertainment licence for a rally with music and stalls after a march through Ayr. After the unlicensed rally went ahead the organiser was charged.¹⁵

In Aberdeen the following month another AUOB organiser was charged after failing to adhere to march conditions laid down by the City Council.¹⁶ In October 2018 AUOB were in dispute with Historic Environment Scotland (HES) over the use of Holyrood Park, in Edinburgh, for which HES had refused permission for a rally. AUOB proceeded to use the public park despite the objections, with Police Scotland viewing it safer to facilitate the rally than to obstruct it.¹⁷

The events organised by AUOB have consistently passed off peacefully and are generally good natured and well-facilitated. That facilitation, however, has been difficult and costly to local authorities, largely through the inability of a small and inexperienced organisation to provide adequate stewarding – but also through an inflexible approach by some organisers to the established systems of notification and negotiation. That can make adequate planning – and the safety of participants and the general public – difficult because of the unpredictability of the organisation and

¹³ BBC News 27 October 2018. <https://www.bbc.co.uk/news/uk-scotland-glasgow-west-45990336>

¹⁴ BBC News 07 May 2019. <https://www.bbc.co.uk/news/uk-scotland-glasgow-west-48178096>.

¹⁵ *The National* 29 June 2019. <https://www.thenational.scot/news/17738145.scottish-independence-auob-ayr-to-go-ahead-amid-rally-concern/>

The National 23 July 2019. <https://www.thenational.scot/news/17787363.manny-singh-faces-charge-one-banner-ayr-march/>

¹⁶ BBC News 27 August 2019. <https://www.bbc.co.uk/news/uk-scotland-north-east-orkney-shetland-49485883>

¹⁷ BBC News 06 October 2018. <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-45760210>

Sunday Times 07 October 2018. <https://www.thetimes.co.uk/article/yes-rally-defies-holyrood-park-ban-dfkrhw3k2>

the organisers. Freedom of Assembly does not denote freedom to march wherever one likes at any time that one wants. Rather, it comes with the duty to act responsibly and to follow well-trodden procedures and policies. This echoes Sheriff Reid's point (see above) that whilst we enjoy rights related to our freedom of assembly, it may be necessary for the authorities to balance the rights of others and to adjust the *manner* in which we exercise our rights.

Finally, here, we might expect further administrative challenges from ostensibly 'successful' marches and parades. For example, All Under One Banner (AUOB) has recently notified Glasgow City Council – giving little more than the minimum required 28-day notice – of its intention to march in mid-January 2020.¹⁸ No organisation is obliged to give more than this 28-day minimum notice, but several obvious challenges will be faced by the Council and by Police Scotland, not least that the Christmas and New Year holidays will, in practice, drastically reduce the number of working days available to make arrangements for what may be a very large demonstration (the organisation themselves have claimed they expect 100,000 participants¹⁹) and to plan its safe facilitation through the city. It is not clear that the notifying organisation has the capacity to provide sufficient briefed and equipped stewards for a large event in such short time, nor will it give sufficient time for a public entertainment licence to be applied for and secured should one be required.

It is clear that the policies and procedures in place to facilitate our Convention Rights work best when all parties in a march or parade act with goodwill and seek to promote good relations. For march organisers this will include giving some thought on the size and impact of what they are organising, and how to best mitigate these in collaboration with Police Scotland and the local authority. In some cases that will entail providing as much notice as is practicable beyond the statutory minimum.

¹⁸ *The National*, 14 December 2019. <https://www.thenational.scot/news/18101405.auob-announces-january-emergency-independence-march-glasgow/>

¹⁹ AUOB <https://twitter.com/AUOBALBA/status/1205915751728787458?s=20>

SECTION 3:

PROGRESS AGAINST RECOMMENDATIONS 2016-2019

In this section, the recommendations made in the Report of 2016 (and the relevant lead organisations) are set against progress as at December 2019.

Recommendation in 2016 [Lead Organisations]		Progress made since 2016
2.11	<p>While recognising that final discussions and decision-making has to take place with the most up-to-date information available, in keeping with the spirit and recommendations of the Orr Review, at a minimum, both the local authority and police should issue acknowledgement of a notification and raise any issues that are clear from the outset at an early opportunity. This will ensure that organisers are apprised of any likely issues or problems and are given a reasonable time to prepare and, if necessary, make any appeals.</p> <p>[Local authorities and Police Scotland]</p>	<p>Limited progress.</p> <p>Falkirk aim to issue and acknowledgement within 24 hours; West Lothian acknowledge all notifications 'without delay' and advise as soon as possible if a Safety Advisory Group (SAG) will be required. This is very good practice.</p> <p>Other local authorities do not issue formal written acknowledgments: there does not seem to be any pressing reason for them not to do so.</p>
2.21	<p>Local authorities and police should give further thought as to how meaningful and proactive engagement involving the community, and as set out in the Orr Review, can take place.</p> <p>[Local authorities and Police Scotland]</p>	<p>Limited progress.</p> <p>This is clearly an issue to which local authorities and Police Scotland has given considerable thought, although the means to carry this forward remains unclear. A key issue here is local context: some local authorities report that they have few</p>

		<p>– if any - problems or issues surrounding parades; others report that they have more serious issues around specific events, such as community gala days with associated alcohol consumption and anti-social behaviour; others have no issues with parades themselves, but regular problems of anti-social behaviour in their aftermath. It is quite clear that there is no single model of community engagement to be achieved.</p> <p>One key difficulty here – discussed later in this report – is that for some ‘contentious’ marches local authorities are wary of raising public expectations that unpopular parades will be prohibited. The circumstances in which local authorities can place restrictions or prohibit marches are, of course, very limited – and it is not at all clear that a wider public appreciate this. This echoes issues raised in the 2016 Report (e.g. 2.24; 2.29).</p> <p>For several local authorities (e.g. West Lothian) the SAG will discuss ‘additional community engagement’ where it is seen as appropriate. This usefully attends to context and ensures communication will be more targeted and effective: good practice.</p> <p>North Lanarkshire operates ‘Community Matters’ local partnership meetings and community forums across their area – this allows for any issues, including on marches and parades, to be raised by any resident. Many local authorities will have similar processes, and these could be used to air issues around marches and parades and to explain the ways in which local authorities can, and cannot, act.</p> <p>Glasgow are currently undertaking a major review of their procedures which will touch on these themes and will involve</p>
--	--	---

		widespread consultation in the city. The review is scheduled to report in 2020.
2.49	<p>Police Scotland and march and parade organisers should prioritise dialogue with a view to establishing/re-establishing fuller police engagement with steward training and deployment.</p> <p>[Police Scotland and march and parade organisers]</p>	<p>No progress to report.</p> <p>Note that this issue has become particularly important in relation to small organisations conducting very large processions (see section on <i>Other marches and parades</i> above)</p>
2.54	<p>Police, local authorities and march and parade organisers should work together to ensure clear procedures are in place for all marches and parades, with clear and consistent briefing, including agreed written action plans. Where appropriate – for example, where additional conditions were attached to a march or parade, or where issues of concern are raised by any of the key parties – Police Scotland, local authorities, march and parade organisers and local communities – de-briefing should take place.</p> <p>[Police Scotland, local authorities and march and parade organisers]</p>	<p>Limited progress.</p> <p>The precise ‘best practice’ approach to these matters will vary according to the various contexts in which a procession takes place. The practice of both West Lothian and Falkirk is that where a SAG approach is deemed necessary, a de-brief will follow the event. This seems sensible, proportionate and consistent. Parading organisations in the West Lothian and Falkirk areas have praised both Local Authority’s fair and transparent approach to their events.</p> <p>March organisers have noted that such practice in other local authority areas are inconsistent or absent.</p>
3.6	<p>The Scottish Government should continue in dialogue with those who may have concerns over static demonstrations, such as local authorities and Police Scotland, to explore what support and advice can be given.</p> <p>[The Scottish Government]</p>	<p>Limited progress.</p> <p>Note that static ‘counter-protests’ have increased in salience and impact (see section on <i>Glasgow</i> above).</p> <p>Both local authority and police respondents suggested that some form of Notification process for static demonstrations would be exceptionally helpful in facilitating such events and ensuring public safety – but it is unclear whether and how this</p>

		<p>could be made compulsory and how such a system would be administrated.</p> <p>It might be noted that many groups holding static demonstrations <i>do</i> inform the police and local authority ahead of time as a matter of routine and of courtesy. Local authorities should give some thought on how to encourage groups to do so and ensure that a clear point of contact is in place.</p>
3.7	<p>Some consideration should be given by the Scottish Government as to whether a change in the legal definition of a ‘public assembly’ (reducing it from ‘twenty persons or more’, perhaps in line with the previous change in England and Wales) would have a positive impact in Police Scotland’s powers to deal with static demonstrations where public order is threatened. This consideration should take into account the effectiveness of such a change, in light of any issues around proportionality and on the human rights of those demonstrating.</p> <p>[The Scottish Government]</p>	<p>Limited progress.</p> <p>Note that this issue was again raised in discussions with Police Scotland.</p>
3.13	<p>Local authorities should give consideration to how they present information and procedures on marches and parades, ensuring that clear and consistent information is readily accessible online. If information is not given online, clear guidance about where it can be accessed is essential.</p> <p>[Local authorities]</p>	<p>Mixed. Good progress made by many local authorities. Little or no progress made by others.</p> <p>Several local authorities reported and described good progress on this and, overall, it would appear that the standard and accessibility of information available on local authority websites has markedly improved. For example, the 2016 Report (3.10) pointed to a lack of information on the Comhairle nan Eilean Siar and Midlothian websites. Both</p>

		<p>websites are now much improved, providing clear and helpful guidance.</p> <p>It is clear, however, that some local authorities have complex websites where information is difficult to find; some have very limited information; some too have outdated information.</p> <p>A check of all 32 Local Authority websites (in December 2019) shows great variation in the clarity and extent of information provided:</p> <ul style="list-style-type: none"> • For some websites the relevant pages are difficult to find, and information is out of date or absent. • Other websites are easier to navigate but may have incomplete information (such as current notified processions, or limited details of routes, starting times etc). Very few websites provide estimates of the size or duration of the parade – this would be very helpful information. • Some local authority websites contain obsolete and/or misleading information. Clackmannanshire’s Notification materials, for example, still require organisers to contact Central Scotland Police. <p>As reported in 2016 there are various models of good practice available. The review of websites in 2019 suggests that very good models would include the websites of Argyll & Bute, Glasgow, Inverclyde, North Ayrshire, Perth & Kinross and West Dunbartonshire.</p>
3.19	Local authorities should give some thought to the way in which their notification process is presented and	Mixed progress.

	<p>explained, such that adequate recognition is given to the rights and responsibilities of march and parade organisers. Good practice examples to facilitate any general ‘refresh’ of materials is readily available.</p> <p>[Local authorities]</p>	<p>Some local authorities have reviewed and refreshed these materials (e.g. Midlothian, Moray, West Lothian):</p> <ul style="list-style-type: none"> • Moray refreshed their materials in December 2016 and now offer a clear and comprehensive document on all aspects of the process. • Midlothian issued useful Guidance on processions in October 2016. <p>Others have reported ‘no progress’ on this issue – though these tend to be rural areas where the number of processions is relatively low. Several local authorities who did not contribute to this report appear to have made no progress, whilst others have made excellent progress (see 3.13 above).</p> <p>At least two Local Authority websites require Notifiers to confirm that they will abide by standard conditions and/or a code of conduct, but do not actually provide these materials to potential organisers.</p>
3.30	<p>Local authorities and police should give further consideration to using the Event Planning and Operations Group (EPOG)/Safety Advisory Group process as used by The City of Edinburgh Council and Scottish Borders Council respectively, as a model that could be adapted to local circumstance.</p> <p>Local authorities and Police Scotland</p>	<p>Mixed progress.</p> <p>Several authorities have used such models over a number of years and these vary by size and urban/rural contexts (such as Dumfries & Galloway, Edinburgh, Scottish Borders, West Lothian).</p> <p>Some local authorities have given this serious consideration, and a SAG model has been implemented or is planned (e.g. Falkirk, 2017; South Ayrshire, 2020).</p>

		Other authorities have given the issue consideration and concluded that such a structured approach would not be suitable for their particular circumstances (e.g. Highland). It is encouraging that local authorities are considering (and in some cases rejecting) this model in light of their own contexts – one size, of course, cannot fit all.
3.31	<p>Those few local authorities who still require organisers to separately notify Police Scotland should consider adopting the single notification model used by the majority of local authorities.</p> <p>[Local authorities and Police Scotland]</p>	<p>No progress.</p> <p>Most local authorities already had this system in place before 2016.</p> <p>Local authorities which still require separate Notifications (according to their websites) include Angus, Clackmannanshire and Stirling.</p>
3.33	<p>Those local authorities who do not have clear codes of conduct and guidance on standard conditions should adopt a policy of providing these as per the recommendations circulated in 2005 and 2006. Those who do have such policies should ensure that they can be readily accessed, are written in plain English and are easily understandable.</p> <p>[Local authorities]</p>	<p>Some excellent progress</p> <p>Again, several local authorities have reviewed and refreshed these materials (West Lothian undertook an impressive refresh of their webpages in 2017) or have plans to do so (Glasgow 2020). Falkirk have considered introducing a Code of Conduct but have delayed this until there is clarity over the position of Temporary Traffic Regulation Orders (TTROs) – on which see 3.90 and 3.91 below.</p> <p>One excellent piece of practice is undertaken by West Lothian, whereby a parade notifier can ask for specific standard conditions to be waived if it suits the particular context or aspirations of the processions. Where this is deemed acceptable to both the local authority and Police Scotland the standard condition is waived. Where Police</p>

		<p>Scotland do not find it acceptable the matter is referred to the Licensing Committee for decision.</p> <p>This is a clear and consistent policy which ensures that the local authority is not imposing a 'one size fits all' policy and allows flexibility in how processions are actually conducted. This is highly commendable.</p> <p>As noted in 3.19 above, at least two Local Authorities require Notifiers to read and abide by documents which they are not supplied with through the Local Authority website.</p>
3.36	<p>Where guidance is not already provided on what (minimum) level of stewarding might be expected, local authorities should consider this. This need not be formalised as a 'standard condition', but could be in the form of indicative guidance.</p> <p>[Local authorities]</p>	<p>Some good progress</p> <p>West Lothian provided a cogent argument against 'generic guidance' on stewarding, since appropriate stewarding would depend on the nature and size of the procession, as well as its route. For many annual processions, they note, the effectiveness of stewarding will have been tested at previous events. Where West Lothian has any concerns about levels of stewarding this is remitted to a SAG where Police Scotland can provide advice. Again, taking a contextual approach, relevant to local experience and tried and trusted practice, is to be commended.</p> <p>Dumfries & Galloway, in their database of processions, routinely record both the 'expected number of marchers' and the 'number of stewards'. This is very good practice.</p>
3.39	<p>It would be good practice for those local authorities who make no general comment on the hours of the day when music will be normally acceptable to do so. This can be</p>	<p>Limited progress.</p>

	<p>worded in a flexible way that allows for local contexts and considerations to play a full part in the notification process.</p> <p>[Local authorities]</p>	<p>It is clear that music is not an issue in many local authority areas. This, for example, has not arisen in Highland but they will, nevertheless, monitor the issue through the Notification process. Again, one size cannot fit all and local authorities should ensure that their procedures are suited to local contexts.</p>
3.46	<p>Local authorities should consider whether Standard Conditions relating only to ‘places of worship’ are fit for their intended purpose. If the intent is to protect ‘solemn occasions’ from unreasonable noise then they should be broadened to encompass a wider range of places (The City of Edinburgh’s formulation offers a good example of how to do so). This, however, places a clear onus on local authorities to give clear and carefully explained guidance to both organisers and police.</p> <p>[Local authorities]</p>	<p>Limited progress.</p> <p>For some local authorities, given the nature of processions under their jurisdiction, this is not seen as a relevant issue for action.</p> <p>West Lothian reviewed its relevant standard condition in 2017. That now states:</p> <p style="padding-left: 40px;">The organiser of the procession shall ensure that any band or bands taking part in the procession cease playing for a distance of 50 metres before and after passing any place of worship or other location where a recognised religious, cultural or legal ceremony is taking place.</p>
3.47	<p>Local authorities should consider whether a ‘blanket ban’ on music around places of worship or places where religious, cultural or legal ceremonies take place <i>regardless</i> of whether a service or ceremony is taking place is disproportionate.</p> <p>[Local authorities]</p>	<p>Limited progress.</p> <p>For many local authorities this has not been an issue and no action has been deemed necessary.</p> <p>One Local Authority noted that the blanket policy laid down in other local authority areas could be construed to be disproportionate. They also noted that identifying <i>all</i> places</p>

		where ceremonies might be taking place might place an overly onerous burden on the organiser/local authority.
3.50	<p>Wherever possible, clear details of what can be allowed on the day, including on issues such as allowing spear-tops on banner poles, should be set-out and recorded in advance of the march or parade to avoid uncertainty on the day itself.</p> <p>[Local authorities, Police Scotland and March and Parade Organisers]</p>	<p>Limited progress.</p> <p>It is clear that these issues have not arisen in many local authority areas and no action has been necessary. Again, as an example, Highland will seek to monitor this through their notification process so as to ascertain if this is relevant to them.</p>
3.58	<p>Local authorities should review the information on future marches and parades they currently provide. Where a clear and comprehensive list of marches and parades, with full information on matters such as the process for comment and/or objection, is not already provided online, local authorities should give consideration as to how this information can be provided.</p> <p>[Local authorities]</p>	<p>Mixed Progress.</p> <p>A number of local authorities have reported updating and refreshing their websites in regard to these issues. As well as being good practice, this can be seen as a positive form of community engagement.</p> <p>Other local authorities, however, do not appear to give any information on forthcoming parades or give out-of-date information. One Local Authorities' information, for example, has not been updated since July 2018.</p> <p>Some local authorities give incomplete information – often dates and routes are well-specified, but actual timings are not.</p> <p>It should be noted that providing such information is required by the Civic Government (Scotland) Act 1982 (as amended</p>

		<p>by the Police, Public Order and Criminal Justice (Scotland) Act 2006):²⁰</p> <p>63 (9) The local authority shall compile, maintain and make available to the public, free of charge, a list containing information about—</p> <p>(a) processions which have, after the coming into force of this subsection, been held in their area;</p> <p>(b) proposed processions which they have, after that time, prohibited under this section.</p> <p>63 (10) 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.</p> <p>There are many examples of good practice in how to provide such information:</p> <ul style="list-style-type: none"> • Perth & Kinross has a very clear description of forthcoming parades, clear information on how to make comments, and a deadline for doing so. • South Lanarkshire offers clear and comprehensive information including maps of the procession route.
--	--	--

²⁰ See <http://www.legislation.gov.uk/ukpga/1982/45/section/63>

		<ul style="list-style-type: none"> • South Lanarkshire also provide a useful <i>pro-forma</i> for lodging objections. • West Lothian carries very clear information about parades and offers clear and helpful guidance on making a representation/objection on a proposed parade. • Note, too, the potential use of the <i>Tell Me Scotland</i> website which some Local Authorities may find effective and convenient (see 3.62).
3.62	<p>Those local authorities with an existing information opt-in list or key interest groups list should make this fact clear on their websites to ensure those interested in being included have opportunity to do so. Where a local authority does not have such lists, they should be introduced.</p> <p>[Local authorities]</p>	<p>Mixed progress.</p> <p>As noted above, making information about forthcoming parades easily available is a good way to pursue meaningful community engagement, and is also a statutory duty.</p> <p>Several local authorities have noted how their opt-in list is advertised, with some aiming to give them greater prominence on websites. Others, however, fail to offer any such information on their websites.</p> <p>It might be noted that local authority administered opt-in lists are not the only way to fulfil this function. Some Local Authorities (including Renfrewshire, West Lothian) make use of the <i>Tell Me Scotland</i> website where the public can sign up for alerts on notified processions in their area and have discontinued 'opt-in lists'.</p> <p>West Lothian view this as 'a much more effective and up to date approach' to communicate accurate information. Other local authorities may wish to investigate whether they could save time and resources through <i>Tell Me Scotland</i>.</p>

3.68	<p>Local authorities should provide clear and concise guidance on how to make comments or objections about marches and parades and on what considerations can be taken into account.</p> <p>[Local authorities]</p>	<p>Good progress.</p> <p>Several local authorities have updated their websites and/or documentation to provide clear advice.</p> <p>Other local authorities, however, provide no such information.</p> <p>See comments in 3.58 above for some examples of good practice in this respect.</p>
3.90	<p>Clarity is urgently required on a number of issues relating to Police Scotland’s current position on their (lack of) emergency powers relating to pre-planned marches and parades. If Police Scotland have received legal advice on this position then they should be encouraged to publish it. They should also be encouraged to publish details of any consultations they have carried out with external bodies, not least local authorities, in relation to their position.</p> <p>[Police Scotland]</p> <p>[Scottish Government response 2016: <i>The Scottish Government acknowledges the concerns around the use of TTROs raised in the report, and the need for greater clarity on this issue. We also recognise that the impact of changes in policy around TTROs is not confined to marches and parades. We are in dialogue with Police Scotland with the aim of gaining clarity on this issue and</i></p>	<p>Mixed progress</p> <p>TTROs continue to be an issue of concern to both local authorities and to parade notifiers. The 2016 Report noted that there were several issues surrounding the legal basis and the extent to which TTROs were required, and no consistent approach to these questions across Scotland.</p> <p>The 2016 Report further noted that this uncertainty and inconsistency was seriously undermining relationships in some local authority areas between parade organisers and local authorities.</p> <p>By 2017 it was clear that Police Scotland and various local authorities were in possession of different legal opinions on these issues. In October 2017 Police Scotland wrote to local authorities to reiterate their position that:</p> <p>... in the absence of a TTRO, it did not have the required legal authority to carry out the duties it had</p>

<p><i>we will give further consideration in light of any information we receive.]</i></p>	<p>previously undertaken (such as closure of roads and control of traffic) and that it would advise event organisers to contact relevant roads authority to apply for TTROs (with associated cost implications).²¹</p> <p>Following this letter, TTRO policy was discussed by the Scottish Police Authority, with the following points minuted:</p> <ul style="list-style-type: none"> • SPA members stressed the importance of early consultation and engagement on potentially complex public interest issues of this nature. • Police Scotland will engage directly with Scottish Government to reach a shared understanding on the legal position. • SPA members encouraged Police Scotland to engage with COSLA, Transport Scotland and other relevant partners in adopting a multi-agency, problem-solving approach to the issue.²² <p>A tripartite group was set up in early 2018 bringing together Police Scotland, local government, and the Scottish Government to seek resolution around TTROs.²³</p> <p>In May 2019 the matter was again discussed by the SPA, where it was noted that the tripartite group had:</p>
---	--

²¹ See the TTRO ‘case study’ in *HM Inspectorate of Constabulary in Scotland, Thematic Inspection of the Scottish Police Authority*, September 2019: page 28.

<https://www.hmics.scot/sites/default/files/publications/HMICS20190926PUB.pdf>

²² Scottish Police Authority (SPA), Policing Committee 24 October 2017. See <http://www.spa.police.uk/news/437924/424704/>

²³ See paper presented to SPA Strategy, Policy and Performance Committee 08 May 2019.

<http://www.spa.police.uk/assets/126884/532470/532474/552201/agendaitem6>

		<p>... agreed to seek further legal advice from senior counsel. Group members anticipate that jointly commissioned advice and a judgment from a senior QC may carry sufficient weight to inform organisational guidance on policy and practice across working group members, and help facilitate resolution.²⁴</p> <p>In the SPA meeting discussion centred around the ‘significant’ and negative impact this ongoing issue was having in inter-agency relationships:</p> <p>Members heard that in an attempt to achieve a national approach this issue has caused significant difficulties with relationships between Local Authorities and Police Scotland and that the potential reputational impacts on relationships was significant.²⁵</p> <p>In November 2019 the SPA noted that:</p> <p>Senior Counsel opinion has been received [by the tripartite group], and has been considered by the joint working group. New shared guidance, informed by Senior Counsel opinion, is being prepared jointly by Police Scotland and local government partners. This will be available in the coming months, and current</p>
--	--	---

²⁴ Paper presented to SPA Strategy, Policy and Performance Committee 08 May 2019.

<http://www.spa.police.uk/assets/126884/532470/532474/552201/agendaitem6>

²⁵ SPA Strategy, Policy and Performance Committee 08 May 2019.

<http://www.spa.police.uk/assets/126884/532470/532474/552201/approvedminute08may2019>

		<p>practice will remain unchanged as the new guidance is being developed.²⁶</p> <p>Thus, progress appears to have been made on the legal questions raised around TTROs and new shared guidance is in preparation. It will be hoped that this is produced as soon as practicable, not least since TTROs continue to pose difficulties and concerns for many local authorities and for parade organisers.²⁷</p> <p>Throughout this review the TTRO issue was raised by local authorities across Scotland. One rural authority, for example, noted that Police Scotland had informed them in 2017 that they would no longer support traffic management for processions, and that notifiers would in all cases have to engage (and pay for) a Traffic Management Company, and in some cases apply for a TTRO, to ensure the safety of participants. Upon that position being challenged Police Scotland agreed to consider each procession individually.</p> <p>Another authority noted continuing ‘confusion and inconsistency’ in Police Scotland’s position on TTROs and who should bear the costs involved in securing one. Another rural authority was concerned about an anticipated parade in 2020 and the likelihood that the notifier would refuse to pay for a TTRO. It is clear that urgent guidance is needed on what costs can be justifiably, and legally, recovered from parade organisers.</p>
--	--	--

²⁶ SPA Strategy Policy and Performance Committee Action Log, 14 November 2019.

<http://www.spa.police.uk/assets/126884/532470/532474/591632/rollingactionlog>

²⁷ See, for example, the difficulties of West Dunbartonshire Council in [considering](#) the Police position in February 2018.

		<p>Another Local Authority, with a substantial number of parades, continue to face a Police Scotland insistence that all marches require a TTRO, and that Local Authority continues to bear the very considerable financial costs. They view the situation around TTROs as 'somewhat challenging' and note that for the many smaller parades they facilitate the TTRO policy is a 'disproportionate burden'.</p> <p>One Local Authority noted that clear guidance and consistency of policy around police powers and TTROs was 'long overdue'.</p> <p>Uncertainty and regional inconsistency in policy continues to have damaging effects. One Local Authority described some parade organisers as clearly 'stressed' about TTROs, and attentive to, and somewhat suspicious of, the general notification procedures as a result. This required substantial effort on the part of the Local Authority to maintain good relations and rapport with groups they had long dealt with without issue.</p> <p>Parade organisers have long been concerned about TTROs, not least the lack of 'positive transparency' on when one is required and for what reason. Many such organisations operate 'nationally' and, for them, the matter of regional inconsistency is acute and confusing.</p> <p>In summary, whilst we seem to be much closer to resolution of the difficult questions around TTROs than we were in 2016 this has been a slow process, and one which continues to put strain on the key relationships in marches and parades, that is between organisers, local authority, and Police Scotland.</p>
--	--	---

		<p>Whatever emerges from the tripartite group there will be several challenges and questions ahead:</p> <ul style="list-style-type: none"> • Given the inconsistency of policy and practice across Scotland, moving to a 'national' position will require that at least some local authorities and Policing divisions will need to change their practice. This will require good support and good guidance. These parties will need to be equipped with a clear and consistent appreciation of how (and why) the new arrangements should be put in place. • There needs to be an open and transparent discussion on costs, not least since there seems to have been an assumption on the part of Police Scotland, and many local authorities, that the costs for TTROs should be borne by the organiser. This is discussed further below.
3.91	<p>It remains unclear (to a lay reader) whether marches and parades fall under the definition of events as described in the existing legislation, and the extent to which multiple TTROs can be issued for the same stretches of public roads without the express permission of Scottish Ministers. If necessary, legal advice should be urgently secured and published. This could be jointly sought by Police Scotland, local authorities and the Scottish Government.</p> <p>[Police Scotland, Scottish Government, local authorities]</p>	<p>Mixed progress</p> <p>The issue of Ministerial consent was raised explicitly by one authority since this requirement had extended the period needed to secure a TTRO 'by a number of weeks'. Again, we await clarity and guidance on these issues.</p>

SECTION 4: STAKEHOLDER VIEWS 2019

In this section, some further views of various stakeholders are outlined by way of expanding upon, or adding to, the perspectives reported in Section 3. These are structured under four broad headings: Processes, Impacts, Objections, and Rights & Duties.

Processes

There was considerable discussion during this review about the processes through which decisions on marches and parades are made. For organisers this was often opaque and confusing and could lead – where relationships were already difficult or strained – to accusations of political or other bias. Such accusations contribute, in some places at some times, to a reluctance by elected Councillors to serve on committees making decisions on marches and parades. Given the very limited circumstances in which local authorities can restrict or prohibit marches, then Councillors may be wary of ‘disappointing’ public opinion. There are also issues about the availability of elected members, particularly in the summer months when the number of processions may peak.

The review heard some suggestions that ‘independent’ decision-making bodies might be set up to oversee controversial or sensitive march notifications and/or to remove the pressure on Councillors. Such a body, however, could only operate under some form of delegated authority from the Local Authority, on whom the responsibility for decision-making lies, and would probably, therefore, only serve to muddy the waters to little positive purpose. In particular, this might exacerbate concerns heard from Police Scotland that the lines of responsibility for decision-making are not always adequately clear.

One interesting suggestion made about process concerned the normal and routine negotiations between the key parties on issues such as timing and routes. Public attention generally is raised only where such negotiations break down: in the normal course of things, however, there are all manner of discussions and agreements which go unrecorded and unnoticed. Thus, a parade may change its time (or even its date) or make alterations to its route to accommodate other events happening in the area. In such circumstances the public will be unaware of the hard work, good will and willingness of police, local authority, and organiser to be flexible. Much of this hard work proceeds through relatively informal discussions and the positive development of good relations. It might be worthwhile, therefore, for all parties to agree a short note, to be published on the relevant Local Authority website, of what agreements have developed through discussion. This should be of a light-touch nature, rather than a bureaucratically demanding process and should not interfere with informal discussions: rather it should encourage them. This will produce a more transparent and fair public documenting of the process of decision making.

Both police and local authority respondents made some comment on the existing minimum 28-day notification period, one that can be very tight to meet whilst taking into account other events, community consultation, etc. Where this does seem to

have produced recent difficulties relates to large marches which opt to have a closing rally with music and other entertainment. The latter, of course, will generally require a Public Entertainment Licence (PEL), and the time required to secure this will often exceed 28 days. The suggested timeline for a temporary PEL in Glasgow, for example, is a minimum of twelve weeks.²⁸ This is an issue for the Notifier to be aware of and to take appropriate action upon. To borrow from Sheriff Reid (see section 2, ***The Reid Opinion***, above), the inability to have musical performances at a rally is unlikely to ‘strike at the essence’ of the right to public assembly.

On the broader issue of the 28-day Notification period it might be noted that prior to the Orr Report and the subsequent *Police, Public Order and Criminal Justice (Scotland) Act 2006*, the Notification period was just 7 days. In 2013 a UN Special Rapporteur recommended that the period was reduced to ‘a few days’.²⁹ In his follow up report the Rapporteur recommended that ‘a notice period should be as short as possible, i.e., a maximum of several days and ideally 48 hours’.³⁰

Overall, the existing 28-day period seems to work well and strikes a good balance between freedom of assembly and the demands of the administrative and planning duties of local authorities and Police Scotland. It also allows a reasonable time for the public to make objections to a parade, and for the Local Authority to consider them - something that would be entirely impractical under the UN Rapporteur’s proposed notice period. It is also unclear how such a short notice period would facilitate legal appeals by organisers against special conditions or prohibitions set down by the Local Authority.

The period, of course, is a *minimum* period, and organisers should be encouraged to submit their notifications as early as possible. Local authorities might reflect on how well they are adhering to their statutory duty to make decisions on notifications ‘as early as possible ... insofar as it is reasonably practicable for them to do so’.³¹ Early clarity on likely issues, or the absence of them, would be a good incentive for organisers to give more than the 28-day minimum notice.

Impacts

Much of the discussion for this review focussed on the various impacts that marches and parades can have and how to best address these.

For example, some local authorities described different levels of anti-social behaviour, and of (in) tolerance towards such behaviours depending upon the

²⁸ See <https://www.glasgow.gov.uk/CHttpHandler.ashx?id=18986&p=0>;

²⁹ See 2016 Report, 2.6.

³⁰ United Nations (2017), *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland*, p15

<https://digitallibrary.un.org/record/1298881?ln=en>

³¹ See Section 63 (4) of the Civic Government (Scotland) Act 1982,

<http://www.legislation.gov.uk/ukpga/1982/45/section/63>

particular nature of the event. One Local Authority noted that a large proportion of marches in their area were related to the Loyal Orders. Anti-social behaviour at these, mostly small, parades was relatively low, but they were nevertheless seen as much more 'contentious' than annual local gala parades, much larger events which saw significant increases in anti-social behaviour. A neighbouring Local Authority reported, however, that many of its larger parades (regardless of the organisation involved) saw alcohol-related anti-social behaviour some hours *after* the event. Such behaviour was a significant impact on the community but could not necessarily be tied directly to particular parades.

There was considerable discussion during this review of various strategies to capture community views. Some local authority officials felt that their processes were too rigid and 'quantitative' and saw the need for more informal and 'qualitative' channels and evidence. Police Scotland plan to directly refer to potential for 'disruption to the life of the community' (on which, see below) in their Community Impact Assessments where appropriate. This would allow for some element of measurable impact for those in particular communities or areas who were anxious or fearful about parades. Police Scotland routinely engage with religious communities and reported no widespread issues about marches and parades, although there may be specific instances of anxiety or concern in particular areas and/or relating to particular parades. Currently most community impact assessments relating to marches and parades are produced by Police Scotland, and they are keen that local authorities find more ways to engage other voices in the discussion.

The review heard important conversations about the difference between 'community impact' and 'disruption to the life of the community' and where the line between these could be best drawn. Every march or parade, regardless of its size or intent, will have an 'impact' on the communities it passes through, for the simple reason that it will occupy the street to the exclusion of others, not least traffic, for a particular period of time. Larger parades will, of course, bring a relatively large amount of people into towns and cities to participate and spectate. This may provide business opportunities in such areas, but it may also dissuade others from coming into such areas. It should be said, of course, that other kinds of events – sporting or entertainment – will have very similar kinds of 'community impact'.

'Disruption to the life of the community' is an important concept, not least because it forms one of the factors which local authorities should take into account in considering a notification of a march or parade:

63 (8) The considerations to which the local authority shall have regard when deciding whether to prohibit the holding of a procession or impose conditions on it under this section shall include—

- (a) the likely effect of the holding of the procession in relation to—
 - (i) public safety;
 - (ii) public order;
 - (iii) damage to property;

(iv) disruption of the life of the community. ³²

How might 'disruption' differ from 'community impact'? As the formulation of the legislation notes there would seem to be an implicit assumption here that 'disruption' would be of a similar elevated magnitude to the three other considerations: public safety, public order, damage to property. Sheriff Reid's 2019 opinion, for example, saw the demonstrable likelihood of 'criminality or disorder aggravated by religious prejudice' as amounting to 'disruption to the life of the community'. The difference then, would seem to be a distinction between 'inconvenience' and 'serious harm'.

Questions remain, however. What thresholds are applied for discerning 'disruption to the life of the community', and who should apply them? What sources of information could, and should, local authorities draw upon in assessing 'disruption'? At present the police have the duty of informing the local authority as regards to the four 'considerations' in Section 63(8)(a) of the 1982 Act, but what other sources of information could, and should, be accessed? And how is that information weighed in the balance?

Many of these questions focus upon a reasonable and appropriate interpretation of the law. Local authorities might look, in the first instance, to Sheriff Reid's opinion as the most current basis for their considerations on this issue.

Marches and parades do not simply impact upon communities, they impact on all three parties involved in the processes too. For organisers the lack of clear information and guidance, and any lack of transparency in both policy and in decision making, can be a source of anxiety and concern. For one organisation, events unconnected to them nevertheless 'tared them with the same brush', and they felt a culture of 'toxic animosity' was emerging between the key parties to marches and parades in Glasgow. There is also a concern that particular types of marches and parades – Loyal Order and Irish Republican – are being treated differently with regards to asking questions on measuring 'community impacts' which are not asked about other marches and parades, even those of considerably larger size.

For local authorities, avoidable difficulties around marches and parades can prove to be a disproportionate burden on time and resources and distract from other duties. As is apparent, marches and parades work well where there is a sense of goodwill and of shared responsibility: where this is absent there are problems. One Local Authority described the unprecedented burden placed on it at all levels – executive officers, Councillors and departments – caused by one single parade. In that case the organiser refused to attend meetings or to consider a public entertainments licence and insisted on their organisation's 'absolute' right to assembly. On the day itself, the march and event passed off peaceably, but at a very significant, and hidden, institutional cost. Another small Local Authority noted that the resources to handle difficult parading issues were limited and impacted by wider Licensing demands.

³² Civic Government (Scotland) Act 1982, <http://www.legislation.gov.uk/ukpga/1982/45/section/63>.

For the police, the impacts of difficulties in Glasgow have been palpable and acute. Section 2 described the vastly increased demands on police resources, particularly for specialist officers. In the context of the East End of Glasgow police resources had to be marshalled for very specific and limited flashpoints, which it might take a parade no more than several minutes to pass. We have already noted that parades which may have taken 10 conventional police officers to facilitate will require, given raised tensions and a counter-protest, around 100 conventional and tactical officers. The massive police operation required in Glasgow in September 2019 is also very notable and clearly unsustainable over any extended period of time.

The burdens on Police Scotland are not simply financial. The need to marshal an increased number of officers to points of growing tension draws officers away from other duties. But there is also a very human cost to Police Scotland. Public order training in Police Scotland is voluntary, and the pool of officers available for specialist roles where there is a potential for disorder is strictly limited. Across the summer and autumn in 2018 and, in particular, 2019 the demand for such officers to police Glasgow parades was particularly high. In practical terms this meant officers routinely having leave cancelled and working many consecutive weekends on specialist tasks. There are significant costs here to morale and to well-being and may prove a disincentive to some officers maintaining or achieving public order accreditation.

A key point here is that much of these impacts, whether on communities or upon public authorities are a key obligation of living in a democracy. The Organisation for Security and Co-operation in Europe (OSCE) of which the UK is a participating state has produced some useful and accessible summaries of freedom of peaceful assembly and the state's obligations in respect to it. For example, the OSCE's *Human Rights Handbook for Policing Assemblies* (2016) notes that there must be a 'presumption in favour of holding assemblies', and that the state carries a 'positive obligation to facilitate and protect peaceful assembly':

Many assemblies will also cause some degree of disruption to routine activities; they may occupy roads and thoroughfares or impact traffic, pedestrians and the business community. Such disruption caused by the exercise of fundamental freedoms must be treated with some degree of tolerance. It must be recognized that public spaces are as much for people to assemble in as they are for other types of activity, and thus the right to assemble must be facilitated.³³

In other words, many of the impacts of marches and parades are the *necessary* impacts of a democratic society. It thus becomes the responsibility of the state to ensure that sufficient resources are given over to (a) dealing with these impacts effectively, and (b) trying to resolve any difficulties and disputes that are creating

³³ *Human Rights Handbook for Policing Assemblies*, OSCE 2016, p15, p13.

<https://www.osce.org/odihr/226981?download=true>.

See also *Guidelines on Freedom of Peaceful Assembly* (Second Edition), OSCE 2010.

<https://www.osce.org/odihr/73405?download=true>

added burdens. This may pose questions about police officers best suited to carrying out all of the roles they currently fulfil in regard to marches and parades? Might other agencies – Community Enforcement Officers, Traffic Wardens, for example – be mobilised and resourced to carry out duties related to some of the non-specialised aspects of facilitating marches and parades on the day? This would not reduce financial costs, but it might allow greater efficiencies in the deployment of appropriate personnel.

Objections

One concrete way to ensure community engagement is to provide robust and accessible channels for individual citizens to make comments and objections to notified processions. There is, however, an inherent and circular tension in public objections in that they are often used to express opposition, concern or outright hostility – issues that local authorities cannot act upon. Many of the objections currently received by local authorities (and, indeed, by Police Scotland and the Scottish Government) are broad complaints which oppose the general aims or character of a particular event or organisation. These are grounds on which a local authority cannot legally restrict or prohibit marches and parades: Local authorities may act, as we have seen, only where there are concerns over public safety; public order; damage to property; or disruption of the life of the community. Political, philosophical or moral objections to a march or parade have no technical merit in the existing legislation, and *nor should they*. As the OSCE advise:

Exercising the right to peaceful assembly is a means of collectively conveying a message or expressing an opinion; this includes the expression of diverse, critical, radical and unpopular or minority opinions. The expression of such radical and minority views may cause some level of offence to other members of the community, but must, nevertheless, be protected and facilitated as long as the actions remain peaceful.³⁴

Where local authorities – inevitably - do not act upon such objections then there is a risk that the public will feel their concerns are being ignored. There may be a risk that local authorities take a march or parade to a committee solely because of objections that they cannot act on, on the basis that objections have been received and should be heard. Such a course of action is likely to create disaffection amongst objectors ('the Local Authority did nothing') and amongst organisers called to committee ('the Local Authority wasted our time'). This is a very difficult balancing act, and one that may serve to increase anxieties around marches and parades rather than address them.

³⁴ *Human Rights Handbook for Policing Assemblies*, OSCE 2016, p13.

<https://www.osce.org/odihr/226981?download=true>.

See also *Guidelines on Freedom of Peaceful Assembly* (Second Edition), OSCE 2010.

<https://www.osce.org/odihr/73405?download=true>

The difficulty, then, is to allow the expression of objections without unduly raising the expectations of a public generally hostile to the inconvenience of marches and parades in general and to the objectives of some marches and parades in particular. Social media has made it easier than ever before to encourage objections but has done little to inform a broader public about the kinds of objections that local authorities can concretely act upon. For one weekend of parades in 2019 Glasgow City Council received over 600 objections – but could not act on any of them. Many of the objections were based on a common template but each required careful logging and response. Other local authorities described a recent rise in objections, particularly to Loyal Order parades, but found that no objectors attended the subsequent committee hearings called to consider them.

The 2016 Report made reference to these difficulties (see 3.66 and 3.67 and Recommendation 3.68) and made some suggestions on how local authorities might 'screen' objections in a way that ensured that submissions that would not be acted upon 'are not needlessly or uncritically introduced into negotiations with organisers'. There is a clear need for this to be done sensitively so that the public will feel they still have an outlet to voice concerns. It is clear that local authorities could give this more thought.

There was also a consensus in the current review that there is not enough guidance for the public on what kinds of issues could be considered legitimate objections which local authorities could act upon, and how they can go about making such objections. The Scottish Government has not issued general guidance on marches and parades since 2006.³⁵ Updates and refreshed guidance would be helpful to clarify – to the interested public as well as to the key parties involved in marches and parades - what kinds of objections and concerns local authorities may legitimately deal with.

Rights & Duties

As noted above, freedom of assembly is a fundamental human right covered by all kinds of international and domestic legislation and conventions. The State has a positive duty to facilitate and protect this freedom, and any limitations or conditions placed on these rights must be necessary and proportionate. It will be recalled that Sheriff Reid's opinion on the re-routing of four parades in Glasgow in 2019 centred around the view that the conditions were necessary and proportionate because of the *specific* likelihood of criminality and disorder ensuing from the circumstances of the proposed routes. The OSCE suggest that prohibitions must be exceptional:

An assembly should only be banned in exceptional circumstances. This may include a situation where there is a significant and real threat of crime or public disorder, an imminent threat to national security or where the aim of the

³⁵ Scottish Executive (2006), *Review of Marches and Parades in Scotland: Guidance for Scottish Local Authorities*. <https://www2.gov.scot/Resource/Doc/159457/0043394.pdf>

assembly is to incite hatred or violence, intimidate or threaten others or to deliberately deny others the right to exercise their legitimate rights.³⁶

The OSCE guidance calls into serious question the suggestions – not least by Glasgow City Council – of blanket bans or an (enforced) ‘moratoria’ on marches and parades (or, at least on certain types of march or parade):

A blanket prohibition of all assemblies at a certain location or for a specific period of time is likely to be a disproportionate restriction on the right to peaceful assembly.³⁷

OSCE guidance is also very clear on the issue of costs, not least of traffic management and TTROs:

The costs of providing adequate security and safety (including policing and traffic management operations) should be fully covered by the public authorities. The state must not levy any financial charge for providing adequate policing. Organizers of non-commercial public assemblies should not be required to obtain public-liability insurance for their event.³⁸

Democratic freedoms do not, of course, consist merely of rights, but also of duties and obligations. Many of these obligations are not legally constituted but are nevertheless necessary for society to function well. As previously noted, where an organiser has a disregard for established (and well-functioning) procedures, or ignores reasonable conditions, it can create a great deal of anxiety and workload for the agencies responsible for facilitating and protecting that organiser’s rights to the freedom of assembly. In essence, acting unreasonably in these regards *undermines* freedom of assembly. More immediately, disregard for conditions can create risks for public safety, not only of those participating in a march or parade, but for a wider public if emergency services are hindered because of unscheduled road closures.

The view of the Scottish Human Rights Commission (SHRC) is that resort to claims to human rights should ideally be seen as a last resort, as sort of ‘Accident & Emergency’ to rely upon when things have gone wrong and relationships have broken down. One source of ‘primary care’ is the Equality Act, 2010 and the Public Sector Equality Duty that it specifies. This is a useful perspective to consider some of the recent developments where things *have* gone wrong, and relationships *have* broken down.

Section 149 of the Equality Act is concerned with Public Sector Equality Duty. Note the sections highlighted here in bold:

149 Public Sector Equality Duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

³⁶ *Human Rights Handbook for Policing Assemblies*, OSCE 2016, p21.
<https://www.osce.org/odihr/226981?download=true>

³⁷ *Human Rights Handbook for Policing Assemblies*, OSCE 2016, p21.

³⁸ *Human Rights Handbook for Policing Assemblies*, OSCE 2016, p21.

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.**

[...]

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) tackle prejudice, and
- (b) promote understanding.**

[...]

(7) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;**
- sex;
- sexual orientation.³⁹

It is noticeable that in the discussions of the tensions in Glasgow over marches and parades much has been made of the balancing of the rights of different parties (as is done very adeptly by Sheriff Reid), but there has been little or no discussion on ‘fostering good relations’. This is all the more noticeable given that much of the discussions in Glasgow have centred around the appropriateness – or otherwise – of *Protestant* parading organisations passing *Catholic* churches.

A useful way of rethinking how to proceed when tensions are high and established systems are under strain is whether ‘fostering good relations’ – or what might be called *neighbourliness* - can address the situation. That is, would better relations, a willingness to be neighbourly, serve to address at least some of the issues? It may well be that the answer is ‘no’, but it seems incumbent on public bodies, under the Equality Act, to pursue this as one potential option. Given that Glasgow City Council has launched a major review into marches and parades in the city it will be interesting to see whether this line of action is pursued, and in what manner.

³⁹ <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

SECTION 5: REFLECTIONS AND FURTHER RECOMMENDATIONS

Reflections

Discussions with Police Scotland in the course of this review underlined that time is of the essence with regard to tensions in Glasgow around marches and parades. It is imperative that the city does not have a third 'marching season' marred by recrimination, criminality and the prospect of disorder. Yet it is also clear that this is an issue largely specific to Glasgow. Police, local authorities and march organisers do not report such tensions elsewhere in Scotland. Elsewhere established procedures and relationships have endured and continue to work well. What might we learn from these differing experiences?

The first conclusion would be that the calls for legislation that emerged from some quarters in the midst of an exceptionally difficult Glasgow marching season were misplaced. This is *not* a crisis of the processes and policies around marches and parades in Glasgow, let alone all of Scotland. Indeed, as Sheriff Reid's ruling on Glasgow City Council's decision to re-route parades away from a Catholic Church demonstrates, the conditions imposed on those particular parades were necessary and proportionate. That is, the processes at that point were working as they should have done.

The second conclusion also follows from the logic of Reid's opinion. Each march and parade must be taken on its own merits, and in light of the unique circumstances and contexts of its proposed route and time. Different marches *cannot* be bundled together: 'blanket bans' or enforced 'moratoria' are not a satisfactory nor a proportionate way to proceed. That these were seriously floated by a public authority is a matter of concern. Sheriff Reid's opinion is helpful here in providing clear guidance on the need for each march or parade to be considered on its own merits.

This leads us to the third conclusion. At the heart of Glasgow's problem is not a breakdown of process but a breakdown of relationships and of trust. The solution to that must be a rebuilding of relationships and the careful building and maintenance of trust. This involves the 'fostering of good relations' – of neighbourliness – and will, of necessity, be a long process. This review heard a genuine desire from all key parties to marches and parades across Scotland – march organisers, Police Scotland and local authorities – for increased dialogue and discussion, and a willingness to invest time and energy in doing so. This would involve clear channels of communication and regular contact between licensing officials or processions officers, senior Police commanders, and key march and parade organisers. This need not be formal and cumbersome – indeed the more informal and 'human' the better. Alongside this there should be a parallel building of neighbourliness along the lines suggested by Public Sector Equality Duty, whereby communities and groups with the protective characteristics of 'religion and belief' can be facilitated in discussion and dialogue so as to build mutual tolerance and understanding, and to give added resilience to the policies and practices around marches and parades which we know work well. That process could well go beyond being seen as a statutory 'duty' for groups with protected characteristics, but instead be regarded as a 'service' to the entire community.

The final conclusion is that almost all relevant parties in Scotland would like to see a reduction in the number of marches and parades, and less ‘costs’ and ‘impacts’ associated with them.⁴⁰ This includes the major parading organisations for whom the organisation of a large number of parades can be draining. The way to achieve such a reduction is precisely through dialogue and cooperation, through the ‘fostering of good relations’ and the reduction of genuine anxieties. The challenge going forward is to find the collective will and leadership to take that difficult path.

Further recommendations

This review makes no recommendation for legislative change to the system of administering and facilitating in marches and parades in Scotland, for the simple reason that the system, as a whole, works very well. The professional effort put into this system by local authorities, by Police Scotland, and by the vast majority of march organisers should be recognised and commended. However, there are some areas to consider in which legislative change might be helpful to fine tune the existing system, and a number of areas where existing good practice can be extended.

RECOMMENDATIONS

There are several recommendations in the 2016 Report where no discernible progress has been made, although similar issues were raised in this review. In light of these:

- (a) The Scottish Government should look to the previous recommendations on static demonstrations (recommendation 3.6) and on the legal definition of public assembly (3.7) and consider whether any further discussion on these issues is necessary.
- (b) Local authorities should ensure that their websites are fit for purpose – and for statutory obligations – in terms of recommendations made in the 2016 Report (namely 3.58 and 3.62). Most local authorities have made good progress on this, whilst others have made little or none. The Scottish Government should further review progress on this in 2021.
- (c) The Scottish Government should refresh its guidance to local authorities (and a wider public) in light of the agreement reached between COSLA and Police Scotland on TTROs. That guidance might also, usefully, provide advice on the types of objections local authorities could take into account when making

⁴⁰ It might be noted that a study by the *Scottish Catholic Observer* (26 July 2019) found a year-on-year *decline* in the number of ‘Orange Walks’ in Scotland with a 12% decrease between 2017 and 2018.

<http://www.sconews.co.uk/latest-edition/58902/revealed-over-2000-orange-walks-in-scotland-over-the-last-three-years-2/>

decisions about marches and parades. The guidance should be framed in light of human rights and of statutory Public Sector Equality Duty.

Events since 2016 have also highlighted other areas where existing policies could be bolstered by small (but significant) shifts in how they are put into operation:

- (d) Local authorities should give some thought on how to encourage organisers to voluntarily notify their intention to hold a static demonstration or assembly and ensure that a clear route for contact is in place.
- (e) Local authorities should consider whether a concise summary of decisions made between organisers, Police Scotland, and local authorities in the process of dealing with the notification can routinely be made public. This would give transparency and legitimacy to the processes in facilitating marches and parades that are often unseen. The refreshed Scottish Government guidance (see (c) above) should highlight this as best practice.
- (f) It is necessary to recognise the considerable costs that public bodies, not least Police Scotland, can occasionally face in facilitating marches and parades. This report heard, in particular, of the impact on staffing resilience and morale for Police Scotland over events in Glasgow and it is important to note these. It may be useful to consider whether other agencies – such as traffic/parking wardens or community enforcement officers - could be co-opted into the more routine aspects of policing parades (e.g. managing traffic). This may not reduce the financial cost of facilitating a march or parade but it might help to ensure that conventional and tactical officers are freed up for other policing duties. Police Scotland could initiate a discussion on this, liaising with local authorities/COSLA and other agencies in the first instance, on what powers might be delegated, for what purpose, and how this might be achieved.
- (g) It seems clear that there is a particular burden on public resources when relationships between the key parties to marches and parades are under strain. Investment in ‘fostering good relations’ at local levels will do much, in the medium to long term, to improve the resilience of these relationships, and to build (in particular with parade organisers) trusted channels of discussion and negotiation. Building such relationships should be seen as the responsibility of all parties to a march or parade, organisers, police, and local authorities. Whilst fostering good relations between individuals and groups across protected characteristics is a statutory requirement under the Public Sector Equality Duty, it should also be seen as best practice in all situations. Where relationships around marches and parades have been damaged or eroded, the Local Authority should strive, in the first instance, to repair them.



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2020

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: 978-1-83960-615-1 (web only)

Published by The Scottish Government, June 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS704886 (06/20)

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