

To: GENERAL PURPOSES COMMITTEE		Subject: REVIEW OF MARCHES AND PARADES IN SCOTLAND
From: DIRECTOR OF ADMINISTRATION		
Date: 6 August 2004	Ref: JAF/IL	

1. **Purpose of Report**

1.1 The report advises the Committee of the commissioning, by the First Minister, of an independent review of the procedures for authorising marches and parades in Scotland and submits, for consideration, observations.

2. **Background**

2.1 The First Minister has commissioned an independent review of the procedures for authorising marches and parades in Scotland and, on 28 June, the Minister for Communities, Margaret Curran, announced that Sir John Orr, former Chief Constable of Strathclyde Police, had been appointed as an independent expert to undertake that review with the aim of reporting to Ministers by the end of the year.

2.2 In making that announcement the Minister stated

“I believe that the time is right to review the issues surrounding marches and parades not only from the view of those who wish to march but also from that of the communities affected by the marches and the authorities who have responsibility for making decisions about marches and ensuring public safety”.

2.3 Also included in the Scottish Executive press release on the appointment of Sir John Orr was the following

“It (*the review*) will also consider what actions could be taken to address the problems caused by marches and parades with specific reference to:

- the period of notice required to be given to local authorities and communities for proposed marches and parades
- the best way to secure community input into Council decisions on marches and parades
- the basis for determining when to restrict, refuse or re-route marches and parades
- the number of marches and parades occurring in any particular community and the effects these have on the communities
- the cost of policing processions and marches.”

3. **Remit of the Review**

3.1 On 13 July 2004 Sir John Orr wrote to a broad range of organisations enclosing the detailed remit of the review – a copy of which is attached as the appendix to this report – and indicating that, to identify the issues surrounding marches and parades from a variety of viewpoints including those of persons who want to march, of communities affected by marches and of the authorities who have responsibility for making decisions about marches and ensuring local safety, he will be looking at specific issues about

- the period of notice required to be given to local authorities, the police and communities for proposed marches and parades (currently seven days);
- the best way to ensure community input into decisions about marches and parades;
- the basis for determining when to restrict, refuse or re-route marches and parades;
- the number of marches and parades occurring in communities and the effects these have;

and

- the costs of policing marches and parades.

In that letter Sir John invited submission of views by 24 September 2004 and indicated his intention to meet with a broad cross-section of people.

3.2 On 15 July the Council received a letter from Sir John Orr. That letter referred to the previous letter written in general terms to a broad range of organisations and indicated that, as part of the information gathering phase of the review, he is keen to develop a better understanding of the current processes for authorising marches and parades in Scotland. That letter indicated, also, that he would be particularly interested in the views of the Council, as a key organisation involved in the current processes, around:

- the practical procedures that are currently adopted when notification of a march or parade is submitted;
- whether there are agreed protocols or operating instructions for handling notifications and whether there are agreed processes for reviewing and learning from past marches and parades;
- what are the particular problems with the current statutory framework;

and

- whether there is or can be any community involvement in current procedures and how this is handled.

The letter indicated also the desire to build up better evidence around the number of marches and parades, the sorts of problems they cause, the sorts of complaints they generate and the costs incurred in arrangements for and policing of marches and parades.

3.3 Following receipt of that letter, on the initiative of Sir John Orr, arrangements have been made for Sir John Orr to meet with the Leader of the Council, the Chief Executive and the Director of Administration. That meeting has been arranged for 31 August 2004.

4. Considerations

4.1 From the time when the Council first assumed its statutory responsibilities with regard to public processions, concerns have been expressed within the Council over the statutory mechanisms. Having regard to those concerns, on 16 October 1996, the General Purposes Committee authorised the Director of Administration to write to the Secretary of State for Scotland to enlist his support in promoting amending legislation which would address the short period of time provided for in statute between notification and the date when the procession is to be held and the absence of procedures whereby agencies other than the police – and, indeed, the community generally – are made aware of such proposals. In accordance with that instruction, representations were made to the Scottish Office and, subsequently, to the Scottish Executive. While a longstanding review, led by the Executive, of the Civic Government legislation (which contains the provisions for notification of and orders affecting public processions) is still taking place, there have been no proposals for change in the legislation as a result of that review. The current review specifically of marches and parades is, accordingly, to be welcomed.

4.2 It is noted that, in the remit of the review, the statutory framework is specified as the Civic Government (Scotland) Act 1982. This is correct insofar as that Act contains the provisions for notification of intention to hold, and orders restricting or banning the holding of public processions. It is, however, considered that reference requires to be made also to the Human Rights Act 1998 which imports to domestic law *inter alia* the provisions of Article 11 of the European Convention on Human Rights. Article 11 is in the following terms:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

The provisions of that Article have been judicially considered in relation to public processions both by Scots courts and by courts in other European states and it is considered that the review requires to proceed on the basis that the statutory framework embraces both the Civic Government (Scotland) Act 1982 and the Human Rights Act 1998.

4.3 The first of the particular issues specified in the remit of the review relates to the period of notice required to be given to local authorities, the police and communities for proposed marches and parades. In its reference to the statutory framework, the remit indicates the assumption that the statutory framework will continue to apply to all marches and parades. It is to be hoped that this is not interpreted as precluding any recommendation on amendment of the provisions of the 1982 Act. As previously identified by the Council, the period of seven days is entirely inadequate and it is considered that there is no impediment to amendment of the provisions of the Act to provide for a longer period of notice. In practice, in the majority of cases, significantly greater notice of the intention to hold processions is given and it is considered that the minimum period should be extended from seven days to, say, thirty days. There would also require to be provision to allow the Council to waive its right to the prescribed period of notice in individual circumstances.

4.4 The second of the specific issues identified in the remit of the review is

“The best way to ensure community input into decisions about marches and parades”.

Given the previous identification by the Council of the inadequacy of current mechanisms through the absence of procedures whereby the community generally are made aware of proposals to hold public processions, this element of the review is to be welcomed. It is, however, noted that, in his letter to the Chief Executive, Sir John Orr seeks views as to “whether there is or can be any community involvement in current procedures and how this is handled”. This may reflect acknowledgement of the provisions of the Human Rights Act 1998 and, in particular, the judicial consideration of that provision in the 2002 case of *Aberdeen BonAccord Loyal Orange Lodge -v- Aberdeen City Council*. In that case the Sheriff stated

“Article 11 gives a right to freedom of association and public assembly and, in my view, it is beyond question that that includes a right to process. This right is not restricted to those whose views accord with the majority”.

In authorising the Director of Administration to write to the Secretary of State for Scotland to seek amendment to the current statutory provisions, the Committee had regard to the fact that regulatory legislation relating to a number of other activities which the Council has statutory authority to control often contains provision for some form of wider public notice which enables the Council, in reaching decisions, to have the benefit of and to take into account the views of others who may have an interest in commenting on the proposal whether these be statutory agencies or, more generally, members of the public. It is, accordingly, considered that there is scope for community involvement – but that, against the background of the judicial conclusion that the right to process is not restricted to those whose views accord with the majority, care must be taken to avoid raising unrealistic expectations among persons offended by marches.

In considering public notification and the extent to which community involvement is possible, the inquiry will need to address the following:-

- Definition of community – is this to be considered the wider community of a local authority area or to be confined to persons living along the route of a proposed procession;
- Gauging of community views – there will remain the difficulty of assessing whether vocally expressed views are, indeed, representative of a wider community;
- Views of which account can legitimately be taken – as the law stands, it is not possible to ban or interfere with a proposed procession on the basis of distaste or disapproval of the cause being advocated or, even, widespread public offence. Similarly the prospect of inconvenience or disruption to normal business of other members of the public is not, in itself, justification for action in respect of proposed processions.

4.5 The third of the specific issues to be considered by the review is the basis for determining when to restrict, refuse or re-route marches and parades. In this, consideration requires to be given not only to the provisions of the Civic Government (Scotland) Act 1982 but, also, to the Human Rights Act 1998 and to the judicial considerations of the provisions of Article 11. It will be necessary for the inquiry to address the difficulty in prescribing definitively grounds on which it is possible to restrict, refuse or re-route marches and

parades. Further guidance on this can only be of advantage, particularly in avoiding the raising of unrealistic expectations.

- 4.6 The fourth issue relates to the number of marches and parades occurring in communities and the effects these have. In North Lanarkshire, during the calendar year 2003, notification was received of intention to hold a total of 189 public processions. Those processions ranged from processions involving fewer than 30 individuals to major processions involving thousands of persons, and the impact on the areas involved varied accordingly. Other factors affecting the impact on local communities include the routes of public processions and, in particular, whether public processions proceed through generally residential areas or are confined to more arterial routes. In the latter case, while there is more significant disruption to traffic, it can be perceived that there is a lesser impact on local communities.

It is to be noted that the number of marches for which notification was given does not reflect the total number of marches in North Lanarkshire: there are a significant number of organisations which, by order, are exempt from the requirement to give to the Council notification: those organisations include such bodies as the Boys' Brigade, Scouts etc. In addition, while much local publicity has related to certain categories of marches perceived to have religious or sectarian connections, there are further marches including such events as Armistice Day parades. The inquiry will require to address the issue as to whether any change in the law requires to relate to all public processions or can relate only to certain categories of public processions.

- 4.7 The final issue specified in the remit is the costs of policing marches and parades. This, by definition, is a matter on which the police can best assist the review.

It is, however, the case that other major events which require police presence – in particular major football matches – require the organisers to either bear or at least make a significant contribution towards policing costs: it may be that the inquiry should address whether this principle should apply, also, to public processions.

5. Recommendation

- 5.1 It is recommended that the Committee

(a) note the review of marches and parades in Scotland, its remit and the arrangements made for a meeting between representatives of the Council and Sir John Orr;

and

(b) agree that the Council make submissions to the review on the basis of the considerations specified in this report.


Director of Administration

Members seeking further information on the contents of this report are asked to contact John Fleming, Head of Central Services on Extension 2228.

REVIEW OF MARCHES AND PARADES IN SCOTLAND - REMIT

Background

Sir John Orr has been appointed to carry out an independent review of current arrangements for taking decision on marches and parades. He has been asked to make recommendations that will help local authorities reach decisions that reflect an appropriate range of views. His recommendations will respect the rights that organisations and individuals have to organise marches and parades in light of the views of communities.

Remit and Scope

The review will be looking at the procedures for authorising all marches and parades in Scotland. It will:

- Identify the issues surrounding marches and parades from the view of those who wish to march, the communities affected by marches and the authorities who have responsibility for making decisions about marches and ensuring local safety;

The review will be looking at specific issues around:

- The period of notice required to be given to local authorities, the police and communities for proposed marches and parades;
- The best way to ensure community input into decisions about marches and parades;
- The basis for determining when to restrict, refuse or re-route marches and parades;
- The number of marches and parades occurring in communities and the effects these have; and
- The costs of policing marches and parades.

Statutory framework

The statutory framework which applies to all marches and parades is set out in the Civic Government (Scotland) Act 1982. It is assumed that the statutory framework will continue to apply to all marches and parades and that the local authority will continue to have the statutory responsibility for deciding whether a march or parade should go ahead.

Timescale and Reporting

The review will take 6 months to complete and Sir John will submit his final report and recommendations to the First Minister in December 2004. The final report will recommend action that can be taken to improve the decision making process, look at how the views of communities can be fed effectively into the decision making process and how best to balance the needs and wishes of communities and the rights of groups and individuals to hold or participate in marches and parades.

Methods of working

The review will make sure that interested parties can contribute their views to the review. Sir John has invited views from a broad range of interests and intends to supplement this written consultation with meetings with a wide range of organisations, including national organisations, councils and community groups. He will also be accepting submissions from members of the public who wish to voice their opinions. Comments should be sent to him at: Sir John Orr, Review of Marches and Parades, c/o Area 2-F, Victoria Quay, EDINBURGH, EH6 6QQ, email john.orr@scotland.gsi.gov.uk