

NORTH LANARKSHIRE COUNCIL

REPORT

To: GENERAL PURPOSES COMMITTEE	Subject: PUBLIC PROCESSIONS – POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) BILL	
From: DIRECTOR OF ADMINISTRATION		
Date: 7 October 2005	Ref: JAF/IL	

1. Purpose of Report

- 1.1 The report advises the Committee of the publication, by the Scottish Executive, of the Police, Public Order and Criminal Justice (Scotland) Bill and of the provisions within that Bill relating to the functions of local authorities with regard to public processions.

2. Background

- 2.1 Following the publication of the Sir John Orr Report on Marches and Parades, the recommendations of that report were formally accepted by the Scottish Executive and a commitment was made to review the law with regard to public processions.
- 2.2 Currently, as regards public processions, local authorities have powers under the Civic Government (Scotland) Act 1982 to apply conditions to or to make Orders banning proposed public processions.
- 2.3 The Police, Public Order and Criminal Justice (Scotland) Bill was introduced in the Scottish Parliament on 30 September 2005. It includes a number of amendments to the provisions of the Civic Government (Scotland) Act 1982 which relate to public processions. It will, however, remain the case that local authority exercise of any powers contained within the Civic Government (Scotland) Act must be within the framework of the Human Rights Act.

3. Proposed Amendments

- 3.1 At present a person proposing to hold a procession in public requires to give to the local authority and the Chief Constable for the area 7 days advance notice. The Bill proposes that this period be extended to 28 days.
- 3.2 There is currently power to local authorities, by Order, to exempt such organisations as they may specify from the requirement to provide notice. The proposed amendments would remove that power from local authorities and, instead, exempt from the requirement to give notice funeral processions and such other organisations as may be specified in an Order to be made by the Scottish Ministers.
- 3.3 The proposed amendments detail the considerations to which the local authority shall have regard when reaching decisions as to whether to prohibit the holding of a proposed procession or impose conditions on it. Those considerations are:

- The likely effect of the holding of the procession in relation to
 - public safety;
 - public order;
 - damage to property;
 - disruption to the life of the community;
- The extent to which containment of risks arising from the procession would place an excessive burden on the police;
- Previous history of processions involving the person proposing to hold the procession or persons likely to take part in the procession in relation to:
 - compliance with conditions imposed;
 - compliance with any guidance or code of conduct issued by the local authority;
 - public safety;
 - public order;
 - damage to property;
 or
 - disruption of the life of the community.

3.4 The amendments propose an obligation on local authorities to maintain a list of processions which have been held in their area and proposed processions which they have prohibited. The draft legislation also proposes that the local authority shall make arrangements to secure that any person or body in their area who makes a request to do so is enabled to receive information about processions which are or might be held in the area.

3.5 A provision is included in the Bill requiring local authorities, in carrying out functions under this part of the Act, to have regard to any guidance in that respect issued by Scottish Ministers.

4. **Commentary**

4.1 The proposed amendments to the Civic Government (Scotland) Act do not give effect to the whole of the recommendations made by Sir John Orr in the Report on Marches and Parades. It is understood that some of those recommendations are now considered to be not legally possible, but that it is intended to give effect to a number of other recommendations through inclusion in guidance to be issued by the Scottish Ministers. Given the requirement on local authorities to have regard to such guidance, any provisions contained in that guidance will, for all practical purposes, be binding on local authorities. It will, accordingly, be extremely important to assess the full resource and other implications of the contents of such guidance. In particular it will be important to try to ensure that the guidance does not contain additional responsibilities on the Council which the legislation does not properly allow for.

4.2 The Bill provides local authorities with no additional powers to ban or to impose conditions on proposed public processions, although it does, for the first time, specify a range of matters to which the local authority shall have regard. In doing so, however, local authorities will remain constrained by the provisions of the Human Rights Act. Any exercise of powers under the Civic Government Act by a local authority will, accordingly, continue to require to be within the provisions of the Human Rights Act and of the European Convention on Human Rights with regard to the right of assembly. This is acknowledged in the Policy Memorandum issued with the Bill, paragraph 176 of which states:

“A local authority is under a duty to act in compliance with the European Convention on Human Rights, so it will be for each authority to ensure that the actual reasons for prohibiting or imposing a condition on a procession do not infringe a person’s right to free assembly and are proportionate to the aims of the restriction”.

Further, paragraph 175 of the Policy Memorandum, with regard to policing, states:

“The state is under an obligation to take reasonable measures to protect those who are exercising their right to free assembly. Section 17 of the Police (Scotland) Act 1967 also imposes a general duty on the police to protect life and property. The Executive therefore also considers that it is not incompatible for a procession to be prohibited or conditions attached to it after considering whether there are sufficient numbers of constables or resources to police the event”.

5. Further Developments

- 5.1 Also issued with the Bill is an explanatory note. Paragraph 244 of that explanatory note acknowledges that the Bill will have resource implications for local government and assesses those implications as a requirement for five staff – two for the City of Glasgow Council, one for North Lanarkshire Council, one for South Lanarkshire Council and one half post each for West Lothian and North Ayrshire Councils.
- 5.2 Without knowledge of the contents of the guidance to be issued by Scottish Ministers, it will not be possible to assess with any degree of accuracy the resource requirements for North Lanarkshire Council. It is, however, clear that one additional post would be entirely insufficient to enable the Council to comply with the recommendations contained within the Sir John Orr Report if that is taken as a guide. This issue is currently being raised with the Scottish Ministers through COSLA.
- 5.3 Further reports will be submitted to the Committee on the progress of the Bill in the Scottish Parliament and on the contents of guidance to be issued by the Scottish Ministers.

6. Recommendation

- 6.1 It is recommended that, meantime, the Committee note the position.


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.