

AGENDA ITEM NO 5

REPORT NO 293/20

ANGUS COUNCIL

CIVIC LICENSING COMMITTEE – 26 NOVEMBER 2020

PUBLIC PROCESSION

REPORT BY DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT

The purpose of this report is to consider a written notice received in respect of a proposed public procession under Section 62 of the Civic Government (Scotland) Act 1982.

1. RECOMMENDATION

It is recommended that the Committee consider the written notice received in respect of the proposed public procession under Section 62 of the Civic Government (Scotland) Act 1982 and determine whether: -

- (i) to make no order in respect of the notice;
- (ii) to make an order in respect of the notice imposing conditions on the holding of the procession to which the notice relates and state reasons for doing so; or
- (iii) to make an order in respect of the notice prohibiting the holding of the procession to which the notice relates and state reasons for doing so.

2. BACKGROUND

- 2.1 Section 62 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) requires a person proposing to hold a procession in public to give written notice of that proposal to the local authority in whose area the procession is to be held and to the Chief Constable within 28 days of the date before the date when the procession is to be held. “Procession in public” is defined as meaning a procession in a public place. “Public place” is defined as any road within the meaning of the Roads (Scotland) Act 1984 and any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- 2.2 Section 63 of the 1982 Act provides that a local authority may, after consulting the Chief Constable, in respect of a procession notice of which has been given under Section 62 of the 1982 Act, make an order: -
 - (i) prohibiting the holding of the procession; or
 - (ii) imposing conditions on the holding of it.
- 2.3 The considerations to which the local authority shall have regard to when deciding whether to prohibit the holding of a procession or impose conditions on it 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; and

- (iv) disruption of the life of the community;
- (b) the extent to which the containment of risks arising from the procession would (whether by itself or in combination with any other circumstances) place an excessive burden on the police;
- (c) where the person proposing to hold the procession has previously held one in the area of the authority or the persons likely to take part in the procession, or some of them, are the same persons as took part in one previously held in that area, or some of them:-
 - (i) whether the previous procession was held in breach of a prohibition under this section on its being held or of a condition so imposed on the holding of it;
 - (ii) whether any guidance or code of conduct issued by the authority as to the holding of the previous procession or as to the holding of processions generally was followed; and
 - (iii) the effect of the previous procession in relation to the matters mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above and in paragraph (b) above.

Where a local authority makes an order prohibiting the holding of a procession or imposing conditions on the holding of it, it must deliver to the person who gave notice of it a copy of the order and a statement of reasons for it.

2.4 A person who has been given notice of an order prohibiting the holding of a procession or imposing conditions on the holding of it can appeal against such an order to the sheriff within 14 days from the date on which the copy of the order and statement of reasons were received by the appellant. On good cause being shown, the sheriff may hear an appeal under this section notwithstanding that it was not lodged within the 14 days referred to above. The sheriff may uphold an appeal under this section only if he considers that the local authority in arriving at their decision to make the order—

- (a) erred in law;
- (b) based their decision on any incorrect material fact;
- (c) exercised their discretion in an unreasonable manner; or

2.5 Section 65A of the 1982 Act provides that a local authority shall, in carrying out functions in relation to public processions, have regard to any guidance in that respect issued by the Scottish Ministers. The current Guidance issued by the Scottish Ministers can be found here: -

<https://www2.gov.scot/Resource/Doc/159457/0043394.pdf>

2.6 The Committee's attention is drawn to Paragraph 10 of the current Guidance which provides:-

Article 11 of the European Convention on Human Rights

10 It is important for your local authority to keep in mind that the 'right to freedom of peaceful assembly' is protected by the European Convention on Human Rights. In particular, Article 11 of the European Convention on Human Rights sets out this right. The right to 'free assembly' is not an absolute one, and can be restricted if needed to:

- protect national security or public safety;
- prevent disorder or crime;
- protect health or morals; or

- protect the rights and freedom of others.

The restriction to be placed on the right to free assembly must also be in proportion so it is compatible with Article 11 of the Convention.

3. REPORT

- 3.1 The Council has received a notice of public procession in accordance with Section 62 of the 1982 Act in connection with a proposed public procession to take place in Arbroath on 3 April 2021. The details of the proposed public procession are set out in **Appendix 1** to this report.
- 3.2 The Committee is required to consider the notice and determine whether: -
- (i) to make no order in respect of the notice,
 - (ii) to make an order in respect of the notice imposing conditions on the holding of the procession to which the notice relates and state reasons for doing so; or
 - (iii) to make an order in respect of the notice prohibiting the holding of the procession and state reasons for doing so.
- 3.3 The Committee will be aware that there are restrictions currently in place across Scotland in relation to the COVID -19 pandemic. There is no certainty as to what restrictions, if any, will be in place on 3 April 2021. If the Committee is minded in principle to make no order prohibiting the procession, it is recommended that the Committee consider imposing a Condition with the effect of clarifying that if there are national restrictions in place for mass gatherings then such restrictions will override any decision by this Committee. Such a condition has been set out within **Appendix 2** for the Committee's consideration.
- 3.4 The Scottish Government has issued guidance in respect of protests and demonstrations taking place during the pandemic. For information, a link to this guidance is provided: -
- <https://www.gov.scot/publications/coronavirus-covid-19-protests-and-demonstrations/>
- 3.5 The organisers have completed a Risk Assessment in relation to the proposed procession and this is attached at **Appendix 3** to the Report.

REPORT AUTHOR: Lynsey Kimmitt, Solicitor

EMAIL DETAILS: LEGDEM@angus.gov.uk

CIVIC LICENSING COMMITTEE – 26 NOVEMBER 2020

(a) Organiser: Neil Mackay

Organisation: All Under One Banner

Date and Time of Procession: 3 April 2021, 12.30pm

Route: Inchcape Park, A92, East Grimsby St, Ladybridge St, High St, Hamilton Green, Abbey St, West Abbey St, Hill Terrace, Hill Rd, Kings Drive, Victoria Park

Estimated number of participants: 20,000

Vehicles: None

Details of Stewarding: The applicant has noted that he will have comprehensive stewarding in place and is willing to engage with Council officers and Police Scotland to ensure that this is satisfactory.

Comments from Police Scotland:

Police Scotland make no objection to the procession but have asked that the Committee consider imposing the following conditions: -

1. The organisers must submit a traffic management plan to the satisfaction of both Council officers and Police Scotland.
2. The organisers must ensure that a Temporary Traffic Regulation Order (TTRO) is in place.

COVID 19 CONDITION:

The procession will only be allowed where permitted by, and in accordance with, legislation, regulations and directions of the UK and Scottish Governments relative to the COVID-19 pandemic, whether relating to the protection of public health, restrictions of mass gatherings, requirement for social distancing or otherwise. For the avoidance of doubt, the legislation, regulations and directions of the UK and Scottish Governments relative to the COVID-19 pandemic shall override any conditions contained in this document should they be at conflict