

**FALKIRK COUNCIL**

**Subject: NOTIFICATION OF INTENTION TO HOLD A PUBLIC PROCESSION - CAIRDE NA hÉIREANN**  
**Meeting: CIVIC LICENSING COMMITTEE**  
**Date: 6 April 2011**  
**Author: ACTING DIRECTOR OF LAW AND ADMINISTRATION SERVICES**

**1. INTRODUCTION**

- 1.1 The purpose of this report is to assist the Committee in considering a Notice of Proposal to hold a Public Procession submitted by Mr Franny McAdam on behalf of Cairde Na hÉireann for a procession through Denny on 16 April 2011.
- 1.2 Cairde Na hÉireann (Friends of Ireland) submitted their notice (attached as appendix 1 to this report) on 3 February 2011. They propose to march along a route from Winchester Avenue through Broad Street, Duke Street, Nethermain Road, Stirling Street and Broad Street before returning to Winchester Avenue. The notification proposes that approximately 400 marchers will be involved.
- 1.3 Cairde Na hÉireann is a political organisation with the stated aims of:-
- campaigning for a united Ireland;
  - supporting sister organisations in Ireland;
  - promoting a new Ireland based on the principles of justice and equality;
  - supporting initiatives aimed at improving the material conditions of the Irish community in Scotland; and
  - campaigning against racism and sectarianism.

**2. DECISION MAKING FRAMEWORK**

- 2.1 The Council's powers and duties in dealing with public processions are set out in the Civic Government (Scotland) Act 1982. As a result of the report by Sir John Orr on "Review of Marches and Parades in Scotland" published in January 2005, the legislation was subsequently amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006.
- 2.2 The legal starting point is the European Convention on Human Rights which provides in Article 11 that everyone has the right to freedom of peaceful assembly. This includes a right to march or parade. This right can only be restricted if it is necessary to:-
- protect national security or public safety;
  - prevent disorder or crime;
  - protect health or morals; or
  - protect the rights and freedoms of others

- 2.3 Any interference with the right of peaceful assembly must be proportionate, which means that the nature of any restrictions must be in proportion to the issues which the authority is trying to tackle.
- 2.4 The Human Rights Act 1998 incorporated the European Convention on Human Rights into UK law, enabling people to enforce their Convention rights in UK courts. Since October 2000, all UK public bodies have a statutory duty to undertake their functions in conformity with the Convention.
- 2.5 Strictly, the licensing authority does not give permission for public processions. The 1982 Act, as amended, provides that organisers must notify the Council of proposed processions. The fact that this is a notification procedure rather than a licence application reflects the fact that the right of peaceful assembly is a fundamental right in a democratic society. The Act provides that in considering whether to prohibit the holding of a procession or impose conditions on it, the Council shall have regard to the likely effect of holding the procession in relation to:-
- public safety;
  - public order;
  - damage to property, and
  - disruption to the life of the community.
- 2.6 The licensing authority can also take into consideration the extent to which the containment of risks arising from the procession would place an excessive burden on the police. However, guidance issued to local authorities under Section 65A of the 1982 Act makes it clear that police costs are not an issue that can be considered.
- 2.7 As detailed in Sir John Orr's report, there have been a number of key court decisions regarding Article 11 of the European Convention of Human Rights in relation to marches and parades. The key points from these are that:-
- it is appropriate to have a authorisation procedure to consider processions;
  - as long as the organiser's intention is for peaceful assembly, the possibility of violent counter demonstration is not reason alone for prohibiting processions;
  - the rights under Article 11 cover processions which annoy or give offence to people opposed to the ideas or claims that it is seeking to promote; and
  - states should protect those involved in processions and take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully.
- 2.8 The Council's Scheme of Delegation authorises the Director of Law and Administration Services to determine public procession applications. That delegation can be declined, however, where the Director considers it inappropriate to exercise it for any reason. Given the extent of community response to this proposed procession, it was considered appropriate that it be referred to Committee for determination.

### **3. PROCEDURES**

- 3.1 Provision with regard to public processions is to be found in part V of the 1982 Act. This sets out, among other things, the notification process, the functions of the licensing authority and the matters to be taken into account in the decision making process. Section 65A of the Act also obliges the licensing authority to have regard to any guidance

issued by the Scottish Ministers. Such guidance was issued in December 2006 and the authority therefore requires to have regard to it when reaching any decision on a proposed parade.

- 3.2 The procedures adopted by the Council for dealing with public procession notifications are outlined in the following paragraphs.
- 3.3 When a notification is received it is normally contained within a form prescribed by the Council and accompanied by a risk assessment, again in the form set out by the Council. Details of the organisation and the chief steward are required in addition to information about the proposed procession: date, time, location, route, expected number of people taking part, control arrangements and the number of stewards attending.
- 3.4 A copy of the notification is sent routinely to Local Members, Central Scotland Police, Central Scotland Fire & Rescue Service and the Roads Authority for comment.
- 3.5 Section 63(10) of the Act requires licensing authorities to “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 [the Act] is enabled to receive information about processions which are or might be held in that area or any part of it.” In this respect, and prior to issue of the 2006 Guidance, all Community Councils within the Falkirk Council area were asked if they wanted to be informed of any public processions taking place in their area. Those who responded in the affirmative were placed on an “opt-in list”. This means that they are given an opportunity to make representations with regard to any particular march or parade in the area they cover. In the case of this particular notification, the relevant Community Council is Denny & District. They were accordingly consulted on this proposed procession.
- 3.6 In addition to having an “opt-in list”, details of proposed public processions are published on the Council’s website: [www.falkirk.gov.uk](http://www.falkirk.gov.uk), as is information on how to make a comment in relation to them.
- 3.7 Once responses have been ingathered, they are considered by licensing officers with a view to identifying any issues that require to be addressed in accordance with the Act and guidance. A precursory meeting with the organiser may be held. This meeting is usually an informal discussion between representatives from the organisation proposing to march, licensing officials and representatives from the Police. Such meetings provide a useful face to face opportunity for all those involved to discuss any issues or problems.
- 3.8 The Council has produced a list of standard conditions for public processions. They are attached as Appendix 2 to this report. The list is not exhaustive and can be added to or taken from having regard to the requirements of any particular procession.

#### **4. PRECURSORY MEETING**

- 4.1 A precursory meeting with Cairde Na hÉireann took place on 11 March 2011. In addition to representatives from the organisation and Licensing officers, officers from Central Scotland Police were in attendance.

- 4.2 The notification and associated risk assessment submitted by Cairde Na hÉireann were discussed. Central Scotland Police expressed particular concern about the originally proposed date for the meeting, 9 April, and the proposed start time of 12 noon. With regard to the former, the police pointed out that there was a Falkirk Football Club match being played at home on the same day. Policing both events could therefore have placed an excessive burden on police resources. With regard to the start time, the police considered that it could be disruptive of the community to march through the town centre at noon when it may be busy with shoppers. Having considered these concerns, Cairde na hÉireann amended the notification to change the date of the proposed march from Saturday 9 April to Saturday 16 April and to bring the start time forward to 10.15am to help minimise any disruption to the community.
- 4.3 Following the meeting, Central Scotland Police advised that, provided the measures they had agreed thereat were secured, they were content that the event could be effectively policed throughout its duration and the level of disruption to those who reside in the vicinity minimised. The police response is referred to further in the next section of this report.

## 5. CONSULTATIONS

- 5.1 As mentioned above, the following persons or bodies were given a copy of the notification and responded as follows:-

Organisation	Response
Central Scotland Police	Submitted a letter of representation which is attached as appendix 3 to this report
Roads Authority	No adverse comment to make
Central Scotland Fire and Rescue Service	No adverse comment to make
Denny & District Community Council	Submitted an objection which is attached as appendix 4 to this report
Local Members	Responses received and attached as appendix 5 to this report

## 6. REPRESENTATIONS FROM THE PUBLIC

- 6.1 In addition to those persons and bodies detailed above, a number of representations have also been received in the form of letters and emails from members of the public. In order to assist the Committee in consideration of this notification, the representations have been collated and categorised into the factors the licensing authority may have regard to as set out in paragraph 7.2 below. Representations that relate specifically to public order are attached as Appendix 6, those that relate specifically to public safety are attached as Appendix 7 and those that relate to disruption to the life of the community

are attached as Appendix 8. There have been no representations made in respect of damage to property. Representations that do not fall easily into any of the said categories are attached as Appendix 9. Representations submitted in support of the procession are attached as Appendix 10. In summary, the following representations have been received:-

- Public Order – 43
- Public Safety – 8
- Disruption to the life of the community – 4
- No specific category – 118
- In support of the procession - 3

- 6.2 The representations have been redacted to remove sensitive personal information such as names and addresses to ensure compliance with data protection rules.

## **7. DETERMINATION**

- 7.1 As noted in part 2 of this report, the organisers of a public procession must give written notice of their proposal to the licensing authority and the Police. The procession can then take place as notified unless the licensing authority, after consulting the Chief Constable, makes an order:-

- prohibiting the holding of the procession, or
- imposing conditions on it.

- 7.2 The 1982 Act also sets out the considerations to which the licensing authority must have regard when deciding whether to make such an order. Those considerations include:-

- the likely effect of the holding of the procession in relation to:-
  - public safety;
  - public order;
  - damage to property;
  - disruption of the life of the community.
- 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;

- 7.3 There is also provision for taking into account previous processions in the area by the same persons but that is not relevant in the case of this organisation as this is their first march to be organised in Falkirk.

- 7.4 With regard to considering disruption to the life of the community, the statutory guidance sets out that “all processions, no matter how small, will cause some disruption to communities and businesses. That is an inevitable consequence of holding processions. However, the degree of disruption may not, by itself (or with other events) be enough to prevent people from holding a procession, or from placing conditions on it. [The licensing authority] will need to consider the circumstances of each notification and assess how far the procession would affect the community or any individual or organisation who can reasonably be considered to be part of a community affected by

the notification, and attach weight accordingly. However, the most important question which [the licensing authority] needs to tackle is whether the level of disruption which will or may be caused by a procession will be far greater than the right to free assembly and this means they need to place a restriction on the march.....Any decision to make an order which prevents a procession or places a condition on a procession will have to keep to the European Convention of Human Rights. As a result, it is important that any order which is made about a procession is a proportionate response to the level of disruption to the community that this event may cause”.

- 7.5 It is worth highlighting, too, that there have been a number of cases before the Scottish courts following decisions to prevent certain marches. These cases have made it clear that a Council cannot prohibit a march due to the nature of the views promoted by the organisation and concern that it might promote religious intolerance or sectarianism.
- 7.6 In the case of Aberdeen Bon Accord Loyal Orange Lodge 701 –v- Aberdeen City Council (September 2001) the court was of the opinion that the Council’s reasons for its decision were not made out and an outright ban was disproportionate. The Sheriff stated that “This right [under article 11] is not restricted to those whose views accord with the majority. It is the essence of a civilised democratic society that many points of view may be expressed in public.” The Sheriff went on to indicate that the right to public assembly may be restricted in certain circumstances but that it was for the public authority to show that it was necessary to curtail that basic right before any such restriction would be upheld. The action proposed needed to be proportionate to the risks which might arise and provide a reasonable response to the perceived risk. The Sheriff considered that a complete prohibition requires much more than “concern that the procession might promote religious intolerance and might interfere with the rights of other citizens to go about their business freely and lawfully ... it is the right of individuals and groups in a civilised society to express their views as long as neither the words nor their actions contravene the law. Tolerance is what is required in a democratic society and that includes toleration of views or sentiments which might not coincide with one’s own”.
- 7.7 In the case of County Grand Lodge of Ayrshire, Renfrewshire and Argyll –v- Argyll and Bute Council the Sheriff stated that “it seems quite clear that ... there is a right to individuals and groups to express their views as long as neither their words nor their actions contravene the law and the mere concern that the procession might promote religious intolerance or might interfere with the rights of other citizens to go about their business freely and lawfully is not sufficient to justify prohibition”. The case of Wishart Arch Defenders Loyal Orange Lodge 404 –v- Angus Council (April 2001) is in similar terms.
- 7.8 More recently, in the case of Provincial Grand Black Chapter of Scotland –v- West Dunbartonshire Council (August 2009), the Sheriff stated that “it is for [the licensing authority] to establish that there is a necessity for intervention and that any intervention will be proportionate to meet that need. Necessary implies the existence of a pressing social need and proportionality has to be assessed by the standards of a democratic society characterised by pluralism, tolerance and broadmindedness.....Following on from that it seems to me to be well established that an organisation such as the appellants must be able to hold their event without fear of disruption or violence from those of competing opinion. While it is the duty of a contracting state to take reasonable steps to enable lawful demonstrations to proceed peacefully they cannot be expected to guarantee that. What they must do is see what can be done to do that.”

## **8. ATTENDANCE**

- 8.1 The national organiser of Cairde Na hÉireann, and representatives from Central Scotland Police and Denny & District Community Council been invited to attend the meeting to be heard on the matter.

## **9. RECOMMENDATION**

- 9.1 It is recommended that Committee considers the terms of this Report and any submissions made before determining whether it is necessary to make an order relating to the proposed public procession.

.....  
Acting Director of Law and Administration Services  
31 March 2011

Contact Officer: Bryan Douglas, Licensing Co-ordinator (extension 1262)

### **LIST OF BACKGROUND PAPERS**

Nil