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Council Building  
2 High Street  
Perth  
PH1 5PH

02/08/2023

A hybrid meeting of the **Licensing Committee** will be held in the **Council Chamber** on **Wednesday, 09 August 2023** at **14:00**.

If you have any queries please contact Committee Services on (01738) 475000 or email [Committee@pkc.gov.uk](mailto:Committee@pkc.gov.uk).

**THOMAS GLEN**  
Chief Executive

***Those attending the meeting are requested to ensure that all notifications are silent on their device and other devices are in silent mode.***

***Please note that the meeting will be broadcast online and recorded. The recording will be publicly available on the Council's website following the meeting.***

**Members:**

Bailie Mike Williamson (Convener)  
Councillor Iain MacPherson (Vice-Convener)  
Bailie Chris Ahern  
Councillor Keith Allan  
Councillor Hugh Anderson  
Bailie Rhona Brock  
Councillor Steven Carr  
Councillor Michelle Frampton  
Councillor Ken Harvey  
Councillor David Illingworth  
Councillor Crawford Reid  
Councillor Willie Robertson  
Councillor Grant Stewart



**Licensing Committee**

**Wednesday, 09 August 2023**

**AGENDA**

***MEMBERS ARE REMINDED OF THEIR OBLIGATION TO DECLARE ANY FINANCIAL OR NON-FINANCIAL INTEREST WHICH THEY MAY HAVE IN ANY ITEM ON THIS AGENDA IN ACCORDANCE WITH THE COUNCILLORS' CODE OF CONDUCT.***

- 1 WELCOME AND APOLOGIES**
- 2 DECLARATIONS OF INTEREST**
- 3 NOTIFICATION OF PUBLIC PROCESSION - 20 AUGUST 2023 - 5 - 28**  
**DISTRICT 65 COLONEL CLELAND MEMORIAL ORANGE**  
**LODGE**  
Report by Head of Legal and Governance Services (copy herewith 23/215)

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<p>All Council Services can offer a telephone translation facility.</p>
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**PERTH AND KINROSS COUNCIL – LICENSING COMMITTEE**  
**09 AUGUST 2023**  
**REPORT BY HEAD OF LEGAL AND GOVERNANCE SERVICES**

<b>TYPE OF APPLICATION</b>	Notification of Public Procession
<b>APPLICANT</b>	David Walters 21 Duff Street Bertha Park Perth PH1 0AE  <b>District 65 Colonel Cleland Memorial Orange Lodge</b>
<b>PREMISES (if applicable)</b>	N/A
<b>THE APPLICATION</b>	The public procession is proposed to take place at 1.15 pm on Sunday 20 August 2023 from Birnam Game Park to Dunkeld Cathedral.
<b>RELEVANT LICENSING POLICIES</b>	All notifiers of public processions are provided with the attached Public Processions Code of Conduct.
<b>LEGAL POSITION</b>	<p>The Applicant has notified the Committee about the proposed procession. The Committee's permission is not required to hold a public procession. Under the Civic Government Scotland Act 1982, anyone organising a parade or procession must notify the appropriate local authority and the police at least 28 days prior to the date of the event. Upon receipt of a notification, the Council has limited powers with respect to parades and processions.</p> <p>Relevant considerations which the Committee must take into account when considering a notification relate to public safety, public order, damage to property, and disruption to the life of the community.</p> <p>The aim of civic licensing and the public procession legislation is to balance the right to freedom of expression and assembly with the need to maintain public safety and order.</p> <p>Police Scotland and Environment Services have stated they have no objections to this application.</p> <p>One email of objection has been received from a member of the public regarding this application (see attached email of objection).</p>

	<p>In deciding whether or not to grant an order preventing procession from taking place or adding conditions the Council - will take into account the following:</p> <ul style="list-style-type: none"> <li>• any Objections or Representations</li> <li>• any other relevant considerations</li> </ul>
<p><b>OPTIONS</b></p>	<p>The Committee can choose to take no action; It has the power to attach conditions or, under very limited circumstances, to ban the parade or procession.</p>
<p><b>PROCEDURE</b></p>	<ul style="list-style-type: none"> <li>• Identify parties.</li> <li>• Consider any preliminary issues.</li> <li>• Member of the public to speak to the objection.</li> <li>• Committee asks any questions to the objector.</li> <li>• Applicant makes a submission.</li> <li>• Committee asks any questions of the applicant.</li> <li>• Objector sums up.</li> <li>• Applicant sums up.</li> <li>• Committee makes a decision.</li> </ul>



**CIVIC GOVERNMENT (SCOTLAND) ACT 1982  
PART V – PUBLIC PROCESSIONS**

**POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006  
PART 2 – PUBLIC ORDER**

**NOTICE OF A PROPOSED PUBLIC PROCESSION**

This form should be completed by the organiser of the event and submitted to us **at least 28 days before** the date of the proposed procession. The organiser should also complete and return the Risk Assessment Form attached to this application. If your event is less than 28 days away and you have not submitted this form to us, you should contact the person named on this form as soon as possible in order to discuss whether you will be able to apply for an exemption to the required 28 day notice period. Please note that we are only able to grant an exemption in exceptional circumstances, such as the event is being organised in reaction to a recent event or announcement.

You should read the attached code of conduct and fill in **all** sections of the form:

- send the completed form to the address at the bottom; and
- keep a copy for yourself.

We will consult with Police Scotland and the Roads Network Department providing them with a copy of your application and risk assessment.

If you require any assistance with completing the form, please contact us. Not completing all relevant sections of the form may delay or prevent us from considering your notification.

**Organiser's Contact Details**

Name: **David Walters** .....

Address: **21 Duff Street Bertha Park Perth** .....

..... Postcode: **PH1 0AE** .....

Phone number: [REDACTED] ..... Email address: [REDACTED] .....

**Chief Steward's Contact Details**

Name: **David Curr** .....

Address: **21 Chestnut Place Perth** .....

..... Postcode: **PH1 1EY** .....

Phone number: [REDACTED] ..... Email address: .....

**Procession Details**

Name of Organisation or Band: **District 65 Colonel Cleland Memorial Orange Lodge** .....

Date and Start Time of Procession: **13.15 20/8/2023** .....

Reason for Procession: **Annual Parade and Conventical of The Battle of Dunkeld** .....

Proposed Route: **Move Off from Birnam Highland Game Park at 13.15pm along A923 over Dunkeld Bridge into Bridge Street , turn left into High Street leading into Cathedral Street into Cathedral grounds for 13.40pm**

.....(Please continue on a separate sheet if necessary)

Number of people expected to take part: **Approx between 60-90**

Please provide details of the arrangements for controlling the event:

**Marshalls will be controlling event alongside Police Scotland**

.....  
.....

..... (Please continue on a separate sheet if necessary)

Number of stewards: **6-9** Number of vehicles: **None**

Do you intend to use a Perth and Kinross Council car park during this event? **No**

Names of any bands and the names of each band member who will be taking responsibility for the bands. The named band members must be present on the day and must identify themselves to the police.

Band A: **One Single Piper**

Name of Responsible Person: .....

Band B: .....

Name of Responsible Person: .....

Band C: .....

Name of Responsible Person: .....

(Please fill in on a separate sheet if necessary)

Is this a sponsored event? **No** If yes, give details .....

Is this an annual event? **YES**

Please provide any extra information about the procession which you think may be relevant:

.....  
.....  
.....  
.....

**I, the organiser, have read your code of conduct and agree to keep to its standard conditions.**

Your signature:  Date: **18/6/2023**

**Send Completed form, together with completed Risk Assessment Form, to:**

Chief Executives – Legal Services  
Perth and Kinross Council  
Pullar House  
35 Kinnoull Street  
Perth  
PH1 5GD  
Tel. (01738) 475000  
Email. [civillicensing@pkc.gov.uk](mailto:civillicensing@pkc.gov.uk)  
[www.pkc.gov.uk](http://www.pkc.gov.uk)



**HOW WE USE YOUR PERSONAL INFORMATION**

The information provided by you will be used by Perth & Kinross Council to process your application and thereafter to keep you informed of any updates with regard to your application or licence.

Your information be shared with Police Scotland and the Roads Network Department.

The Council may also check information provided by you, or information about you provided by a third party, with other information held by us. We may also get information from certain third parties or share your information with them in order to verify its accuracy, prevent or detect crime, protect public funds or where required by law.

You should be aware that the names of individuals who hold this licence appear on a register which is available for public inspection

*For further information, please look at our website [www.pkc.gov.uk/dataprotection](http://www.pkc.gov.uk/dataprotection); email [dataprotection@pkc.gov.uk](mailto:dataprotection@pkc.gov.uk) or phone 01738 477933.*



**CIVIC GOVERNMENT (SCOTLAND) ACT 1982  
PART V – PUBLIC PROCESSIONS**

**POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006  
PART 2 – PUBLIC ORDER**

**RISK ASSESSMENT – PROPOSED PUBLIC PROCESSION**

**General information for the organiser**

We are asking you to fill in this risk assessment form to help us understand what dangers and risks might be associated with holding your event. This form will take you through the most common areas of risk which we and Police Scotland might want to raise with you. We and Police Scotland may carry out our own assessment of risk and may want to discuss our assessment with you before any meeting is held or at the first meeting itself.

**Purpose of filling in the risk-assessment form**

A risk assessment of the procession will help to:

- identify any dangers associated with holding it;
- evaluate the level of any known risks;
- decide who is at risk and in what way and how the risk to them could be got rid of; and
- decide, whether other types of risk have been identified, whether it would be possible to introduce appropriate measures to allow the procession to go ahead.

**Who should be filling this form in?**

It would be preferable if you were a suitably qualified person (e.g. someone who is trained in health and safety regulations). If that is not possible, someone else in the organisation with a strong knowledge of the area where the march is to be held should fill it in. We will then check the form and compare it to the assessment of risk which we and Police Scotland may be carrying out.

**How to fill in the form**

You should work your way through the form section by section. If there are parts to sections which you cannot fill in, you should contact the person named at the end of the form. If your overall assessment shows that there is a high risk associated with holding the procession, you should get in touch as soon as possible to discuss if we can find solutions to reduce or remove the risk. Once we have considered the notification, the risk assessment and all other evidence, we may contact you to hold a meeting.

**Next steps**

We will assess the risks associated with holding your procession within the first two weeks of us receiving your notification and risk-assessment forms. You should remember to keep a copy of this form for your records and bring it with you for any meeting which we may hold. This is because we and Police Scotland may want to raise issues with you about how your assessment compares to ours. In case there are problems, we may need further meetings.



CIVIC GOVERNMENT (SCOTLAND) ACT 1982  
PART V – PUBLIC PROCESSIONS

POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006  
PART 2 – PUBLIC ORDER

**RISK ASSESSMENT – PROPOSED PUBLIC PROCESSION**

**Section One**

Name: **David Walters** .....

Address: **21 Duff Street Perth**  
.....

..... Postcode: **PH1 0AE** .....

Phone number: [REDACTED] ..... Email address: [REDACTED]

Date of Procession: **20/8/2023** ..... Time of Procession: **13.15pm** .....

Proposed Route: **Move Off from Birnam Highland Game Park at 13.15pm along A923 over Dunkeld Bridge into Bridge Street , turn left into High Street leading into Cathedral Street into Cathedral grounds for 13.40pm**  
.....

(Please continue on a separate sheet if necessary)

**Section Two**

This section sets out the main areas of the risk assessment. You should provide as many supporting comments as you can.

Is the date of your procession particularly significant to the organisation?	<b>Yes It's the nearest Sunday to the Anniversary Date of the 21<sup>st</sup> August the date of The Battle of Dunkeld</b>
Has your organisation marched along the same route before?	<b>Yes</b>

**Section Two (cont.)**

Are there enough trained stewards to control the numbers of marchers expected?	<b>Yes</b>
Have there been any difficulties or tensions in the recent past with holding this procession?	<b>No apart from a few letters of opposition over the years</b>
Please assess the level of risk there may be to public safety. (Please also say whether the risk is low, medium or high)	<b>Low</b>
Please assess any risk to public order. (Please also say whether the risk is low, medium or high)	<b>Low</b>
Please assess the risk of damage to property. (Please also say whether the risk is low, medium or high)	<b>Low</b>
Please assess the risk of disruption to local business, the community or shoppers and traffic from holding the procession. (Please also say whether the risk is low, medium or high)	<b>Low</b>
Taking account of all the information in this table, what is your opinion of the overall risk of holding the procession? Is it low, medium or high?	<b>Low</b>

### Section Three

This section details other information which you should consider as part of a general assessment of the procession. You should assess the following.

At the end of the march, what are your arrangements for getting marchers to go home?	<b>Mini Bus and cars will be taking all participants home from Conventicle or Royal British Legion Club</b>
Are you organising any other social events at the end of the march? (Please give details of what these are.) And will you need a police presence?	<b>Yes , Tea and Coffee and Refreshments will be available at The Royal British Legion Club in Dunkeld</b>
Is the proposed route shown on your notification as a route that your organisation commonly uses?	<b>Yes</b>
Have you taken out insurance to help cover for any risks arising from the procession?	<b>Liability Insurance through The Grand Orange Lodge of Scotland.</b>
What is your assessment of the risks to marchers if the route passes through communities which may be against the march?	<b>Low</b>
Do you have enough security in place for any coaches and other vehicles used by the marchers?	<b>Yes</b>
Have you considered the policing and attendance costs for holding the procession?	<b>Yes</b>
Have you assessed what other priorities there may be in the area on the day of the march?	<b>Not aware of any major events that day</b>
Have you considered the effect on the community as a whole if the march went ahead?	<b>Yes</b>
Could you combine this procession with other similar events in the area? If not, why not?	<b>No , This is an Annual Parade and Conventicle significant to Dunkeld on that date.</b>

**Section Four**

**Final Assessment**

If the local authority is holding a meeting, I would like to raise the following points about this risk assessment.

- >
- >
- >
- >
- >

Please provide any other supporting comments.

**Section Five**

**Declaration**

I have assessed the risks associated with holding the above procession.  
I will come to any meeting which may be needed.

Signature of the person carrying out the risk assessment: [Redacted] .....

Name in BLOCK CAPITALS: DAVID WALTERS .....

Relevant qualifications of the person carrying out the risk assessment:

**I have attended and organised this and similar Parades in Perthshire for over 20 years.....**

Signature of organiser: [Redacted] .....

(You only need to fill in this part of the form if you are not the person who carried out the risk assessment.)

Name in BLOCK CAPITALS: DAVID WALTERS .....

Date: 18/6/2023 .....

**Send Completed form to:**  
Chief Executives – Legal Services  
Perth and Kinross Council  
Pullar House  
35 Kinnoull Street  
Perth PH1 5GD  
Tel. (01738) 475000  
Email. [civclicensing@pkc.gov.uk](mailto:civclicensing@pkc.gov.uk)  
[www.pkc.gov.uk](http://www.pkc.gov.uk)



We will make sure that a copy of your assessment is sent to Police Scotland and the Roads Network Department.

## **HOW WE USE YOUR PERSONAL INFORMATION**

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The Council may also check information provided by you, or information about you provided by a third party, with other information held by us. We may also get information from certain third parties or share your information with them in order to verify its accuracy, prevent or detect crime, protect public funds or where required by law.

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## Public Processions

### Code of Conduct

#### All organisers should:

- provide 28 days notice to the Council of the intention to hold a procession;
- give notification as early as possible in those cases where a series of similar processions is proposed;
- co-operate with the Council and the Police from the time of submission of the notification of a procession until the procession disperses;
- identify himself/herself to the Police Officer in charge at the commencement of the procession;
- ensure that the route is as agreed with the Council;
- ensure that the number of participants does not exceed that stated in the notification;
- ensure that the procession commences promptly, at the time stated, and finishes at the time stated;
- ensure that all participants have been informed of any conditions imposed on the procession (change of timing, change to route etc);
- ensure anyone under the influence of alcohol and drugs is not allowed to participate;
- ensure an appropriate ratio of stewards and marshals to participants (one to ten) and that all stewards:
  - are briefed by organisers and given guidance/instruction on their role prior to the procession;
  - carry proof of status;
  - co-operate with the Police as required;
  - are highly visible and easily identifiable;
  - conduct themselves in a proper manner;
  - ensure that participants comply with directions regarding their own public safety and that of the public;
- ensure that, wherever possible, processions follow main roads, rather than going through residential housing developments;
- ensure that all participants keep to the near or left hand side of the street except on one-way streets where they will keep to the right side;
- ensure that the Police are assisted in guaranteeing that passage is allowed for traffic and pedestrians;
- ensure that, if necessary, the procession is split into sections in order to avoid serious dislocation of traffic and to facilitate the crossing of pedestrians who have a right of free access and passage to or through any public area;

- ensure that all playing of music ceases when approaching and passing places of worship while services are in progress, as instructed by the Police;
- ensure all participants disperse as soon as the procession concludes;
- ensure that the behaviour of participants could not reasonably be perceived as being deliberately aggressive (ie threatening, abusive, homophobic, sectarian or racist);
- accept that he/she is responsible for the behaviour of all participants, including bands where appropriate (as well as followers) and for ensuring general compliance with the Council's Code of Conduct on public processions and Police instructions;
- note that the conditions of Section 62 of the Control of Pollution Act 1974, in relation to the use of loudspeakers, shall be observed;
- note that the terms of the Public Order Act 1986, in relation to the prohibition of the wearing of uniforms signifying association with any political organisations etc, shall be observed;
- ensure that no banners or similar placards likely to incite a breach of the peace or contravene the Terrorism Act 2000 are displayed;
- note that the terms of the local byelaws, wherein force, in relation to the prohibition of the consumption of alcohol by any person in a designated place, shall be observed;
- note that the Council may take into account any public disorder, anti-social behaviour or damage to property resulting from a specific procession if notification is received from the organiser for a similar march.

**All participants in processions should:**

- behave with due regard for the rights, traditions and feelings of others in the vicinity of the procession, particularly in areas where there has previously been public disorder around processions;
- behave with due respect at "sensitive" areas such as places of worship;
- refrain from using words or behaviour which could reasonably be perceived as being deliberately aggressive (ie threatening, abusive, homophobic, sectarian or racist);
- obey the lawful direction of procession organisers, stewards and the Police at all times;
- keep to the designated route as directed by the Police;
- refrain from consuming alcohol or drugs prior to or during the procession;
- not display banners or similar placards likely to incite a breach of the peace or contravene the Terrorism Act 2000;
- disperse in good order as soon as the procession concludes.

**Oral Submission to Perth & Kinross Council ref District**  
**L.O.L No.65 Procession and Conventicle in Dunkeld**  
**Sunday 20 August 2023**

Freedom of Assembly The right of freedom of peaceful public assembly is included as a fundamental right within all the major international human rights instruments, including the European Convention on Human Rights [ECHR] which was ratified by the UK government in 1951 and entered into force in September 1953. Freedom of assembly includes the right to parade, process, march demonstrate, rally, picket, protest and to participate in other forms of gathering in public space to voice opinions and express views collectively. The right to assemble is particularly important for minority and marginalised groups whose voices may otherwise not be heard or expressed in the mass media, nor reflected in the views in the mainstream political parties. Exercising the right to assemble and protest will often lead to unpopular, controversial and outrageous views being expressed, and people may be offended and challenged, but this is just one part of the wider process of debate and discussion that drives social change. Public assemblies will almost inevitably lead to some level of disruption to the lives of others. Sometimes disruption may be the direct aim, if for example protesters attempt to confront opponents or to challenge assumptions, but often it is an indirect consequence of assembling people in a public space that is otherwise used for more mundane activities, such as shopping or traffic. But rather than seeing a protest as an exception or an inconvenience, they should be considered as a vital part of the democratic process and with as much claim on public space as pedestrians, car drivers and the business community. If demonstrations are so constrained that they do not, or are not allowed to, impinge on, or be heard by others, then they are unlikely to have any impact, they become neutered, and the exercising of a fundamental human right will be undermined. The right to assembly is a key civil and political right, and as such the state has a positive obligation to protect and facilitate the exercise of the right. However, the right to assemble is not an unlimited right. Rather it is a right that can be legitimately constrained by the state in certain circumstances. All international human rights instruments confirm that the right only extends to peaceful protest, there is no right to use physical violence as part of an assembly, and thus those who use physical force are not considered to be exercising a protected right. Article 11.2 of the ECHR sets out a number of other grounds in which the right to assemble may be limited: "No restrictions shall be placed on the exercise of these rights other than such 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 and morals or for the protection of the rights and freedoms of others". Furthermore, while the ECHR affirms that the right to assemble applies to all without discrimination (Article 14), it also states that exercising a human right must be done in a way that respects the rights of others, and one cannot invoke a right to do something that is deliberately designed to restrict other people's rights (Article 17). Thus, what begins by being expressed as a broad principle, 'my right to assemble and protest' for example, is not quite so simple in practice. As always there is a challenge to interpret when and in what context it is legitimate to impose restrictions and when it is the responsibility of the state to protect the right to assemble. The ECHR outlines rights as broad principles but cannot provide unequivocal direction for all cases; rather the principles always have to be interpreted and reinterpreted according to the particular local context. The need to protect the right to assemble, while balancing the rights and interests of others and the desire to maintain public order, remains a constant challenge for the state. Furthermore, a state's willingness to

protect and facilitate the right to assemble, remains a key indicator of its general respect of human rights due to the way that the right to assemble is played out in the public sphere. I would refer Perth & Kinross Council to the terms of Lord Clyde's speech in DPP v Jones (1999) 2 AC 240. "It seems clear that there is a public right to pass along the public road but of course, subject to certain limitations and restrictions open to a local authority under section 62 of the 1982 Act. This permits the local authority to propose conditions or prohibition but requires them to base any decision on correct facts, exercise their discretion in a reasonable manner and act within their powers". They also require to give reasons if they have exercised their discretion. What objectors are proposing is a restriction on the organisers Right to Process along the route of their choosing in other words a prohibition. However, it is submitted that "No restrictions may be placed on a march unless the Council can demonstrate that it is 'necessary' for one of the reasons in Article 11.2. The Convention case law makes it clear that 'necessary' does not mean 'useful' or 'desirable', but it implies a 'pressing social need', thus making it a strong word. This has been accepted in the Scottish Courts where a Sheriff has said, in a challenge to a ban on a march that "it is for the public authority to show that it is necessary to curtail the basic right before any such restriction will be upheld" – Aberdeen Bon Accord Loyal Orange Lodge 701 v Aberdeen City Council 2002 SLT (Sh Ct) 52. In Novartis Pharmaceuticals UK Ltd v Stop Huntingdon Animal Cruelty [2010] HRLR 8, the English court said: 2/8 "As the wider authorities make clear, any restrictions on the rights of freedom of expression, and/or of freedom of assembly and association, must be: (i) convincingly established; (ii) justified by compelling reasons; (iii) subject to careful scrutiny; (iv) proportionate and no more than necessary." It should be noted that "No restrictions shall be placed" of the right to process, unless they are "necessary" for one of the reasons in Article 11.2. The lodge contends, therefore, that if any conditions are to be imposed on any procession that it is only lawful to impose such conditions if the council can show that the conditions are necessary for one of the purposes in Article 11.2; that the need has been convincingly established and is justified by compelling reasons. If that cannot be demonstrated, then such conditions would be a breach of the direction that "No restrictions shall be placed on the exercise of those rights". Accordingly, the Civic Government (Scotland) Act 1982 as amended by the Police, Public Order & Criminal Justice (Scotland) Act 2006 must be read and understood against that background. The Lodge has a right of freedom of peaceful assembly, which includes a right to assemble, and that right may be exercised in any manner the Lodge wishes and this includes the selection of places to assemble. The council's duty is to take reasonable and appropriate measures to enable lawful assemblies to proceed peacefully. In the case of Provincial Grand Black Chapter of Scotland -v- West Dunbartonshire Council (August 2009), the Sheriff stated that "it is for [the local 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." A Council and its councillors have a duty, not only to their constituents, but also a duty not to act in any way which contravenes the European Convention on Human Rights & Fundamental Freedoms. We submit that the Loyal Orange Institution is a religious organisation within the meaning of the Human Rights (Scotland) Act 1998, Section 13 (1) which provides that "if a Court's determination of any question arising under this Act might as affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, IT MUST HAVE PARTICULAR REGARD TO THE IMPORTANCE OF THAT RIGHT". We submit further that Perth & Kinross Council is a court within the meaning of the same statute. 3/8 Freedom of peaceful assembly is a fundamental human right which can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. It has been recognised as one of the

foundations of a functioning democracy. Facilitating participation in peaceful assemblies helps ensure that all people in a society have the opportunity to express opinions which they hold in common with others. As such, freedom of peaceful assembly facilitates dialogue within civil society, and between civil society, political leaders and government. Freedom of peaceful assembly can serve many purposes including (but not limited to) the expression of views and the defence of common interests, celebration. Commemoration, picketing and protest. The exercise of the freedom can have both symbolic and instrumental significance; and can be an important strand in the maintenance and development of culture, and in the preservation of minority identities. Article 11(1) is a right with profound content. Participants in public assemblies have as much a claim to use such sites for a reasonable period as everyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used (such as commercial activity or pedestrian and vehicular traffic). This principle has been clearly stated by the European Court of Human Rights in *Balcik v. Turkey* (2007) at paragraph 52, and *Ashughyan v. Armenia* (2008) at paragraph 90: "Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic, and where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 ECHR is not to be deprived of all substance". The Lodge's position is that this is not an application that Perth & Kinross Council has before it but a notification. We do not seek a licence to hold a procession because one is not required. The Lodge has particular problems with the Document attached to the papers entitled "Report by Head of Legal Services as inter alia it fails to point out the Council's unequivocal duty in terms of the European Convention on Human Rights AND the Human Rights (Scotland) Act 1998 to positively promote the fundamental right of freedom of Peaceful Public Assembly. Your Director of Legal Services states that: - The committee has three possible courses of action open to it in determining the notification in terms of the Civic Government (Scotland) Act 1982, Section 63. 4/8 OPTION 1 - Accept the Notification as received OPTION 2 – Accept the notification and make an Order imposing Conditions such as those set out in attachment 10 to this report and any other conditions that the Committee considers appropriate. The conditions include provision for timing, route, compliance with Police instructions, litter disposal, marshalling and stewarding arrangements. A Code of Conduct (see attachment 8) detailing what is expected of organisers and participants can also be issued although this does not form part of the conditions of the Order. 9) Obtaining a TTRO for the event. OPTION 3 - Reject the Notification and make an Order prohibiting the holding of the procession. The Lodge would contend that this is not an accurate summary of the legal position, apart from OPTION 1. In OPTION 2 - the final bullet point is ambiguous as, it, at the very least, implies that the Council could impose, as a condition under Section 63 of the 1982 Act, a requirement that the Organiser obtain a Temporary Traffic Regulation Order for the event. The Lodge submits that primary responsibility for roads rest with the relevant road's authority (Local Authorities and Scottish Government with regards to trunk roads) and as such it will be for the roads authority to make a judgement as to whether this pre-planned event requires road(s) to be closed or other restrictions imposed on the flow of traffic to allow it to proceed safely. The Road Traffic Regulation Act 1984 (section 14 and 16A) gives powers to the relevant traffic authority to grant a TTRO and it is this order that permits road closures and other traffic management measures to be implemented. As it is the primary duty of the road's authority, any police officers in the vicinity of the event will invoke their common law powers if the roads authority fails to discharge its duty and fails to implement the necessary TTRO's and appropriate traffic management plans, supposing these to be necessary. Police Scotland have not requested that a TTRO is put in place. It is quite wrong, therefore in our opinion to suggest that the organisers of this event might be

required to obtain a TTRO. It seems to us that there is prima facie a right for all persons to use a public road. A TTRO is an exceptional measure which can be used to limit the right of road users to use that road for the purpose of travel on it. Prima facie those who wish to walk down a road, for whatever purpose, are using it for the purposes for which the road is intended. We would ask Perth and Kinross Council to consider the Venice Commission Guidelines on Freedom of Peaceful Assembly and Explanatory Notes which are based on International and regional treaties and states practices as derived from national court decisions ("VCG") As the VCG notes: "69. "To require assembly organisers to pay such costs would create a significant deterrent for those wishing to enjoy their right to freedom of assembly and might actually be prohibitive for many organisers. As such, imposing onerous financial requirements on assembly organisers is likely to constitute a disproportionate prior restraint". The measures need to be within the law i.e., conditions prescribed by law, and they cannot be disproportionate. We submit that. 1. Nothing in the 1982 Act provision contemplates any conditions which require payment. "Reasonable conditions" has content. It cannot have unlimited scope. We see no basis for cost charging in the 19852 Act. Nor do we see it in the TTRO regime even of that regime had application; and 2. In general Article 11 terms, imposing significant costs or arguably any costs on an organiser are likely to be regarded as disproportionate: and 3. It is no answer as a matter of law to say that resources (Council or otherwise) are relevant. This is because states which contract with the ECHR are meant, as a matter of principle, to organise themselves in such a way as to ensure delivery of respect for ECHR rights. That assumes budgets are sufficient to meet these obligations that is why, per the guidance, resources are not a relevant consideration. Our position in this regard is, that if Perth and Kinross Council has adopted a policy that compels a parade organiser to commission a TTRO for a public procession then it is acting ultra vires of its authority. So far as any requirement to meet the costs of a TTRO is concerned your Council is advised that the Lodge formally repudiates any liability to meet any such cost. After consulting our legal advisers and taking the advice of learned counsel, our view is that any suggestion that the organiser of a public procession is required to commission – or is otherwise responsible for meeting the cost of TTROs or Traffic Management Plans is a violation of the democratic right of freedom of peaceful public assembly. 6/8 We submit that if a TTRO is considered necessary before a procession can proceed, then the responsibility for securing one lies with the Council or Police Scotland and not with the event organiser. The whole question of the provision of TTROs arose shortly after the formation of Police Scotland when ACC Bernard Higgins wrote to local authorities stating that Police Scotland would no longer provide Police cover at pre-planned events and that the organisers of such events should commission the obtaining of a TTRO. This suggestion was resisted by this organisation (and no doubt others) as being based on an erroneous legal foundation and led to the lodging of the action in the Sheriff Court of Perth and Kinross Sheriff Court already mentioned. It is the understanding of the Loyal Orange Order that, earlier in 2021 ( as yet unpublished) 'tripartite ' agreement was reached between Police Scotland, the Scottish Government and the Convention of Scottish Local Authorities which makes it clear that the securing of a TTRO ( on the relatively rare occasions one is actually required) is the responsibility of the relevant roads authority which is, in the particular context of the procession proposed for Sunday 23rd August, Perth and Kinross Council. No doubt your Director of Legal Services will wish to check the accuracy of a TTRO was an option open to the Committee in advance of the hearing on Tuesday 8th August. The provision of TTROs arose in Perth and Kinross in June 2015 when the local Orange Lodge raised an action against the Council which proceedings were settled in the Lodge's favour (see The Courier & Advertiser Saturday 06/06/2015. CONCLUSION What the Objectors are asking here, is that Perth and Kinross Council restrict the Human Rights of the Orange Order because of thematic objections to the message the objectors perceive, that the marchers wish to project.



This, I, submit would be a discrimination and a violation of Article 1 of Protocol 12 and the Committee is obliged to reject it on that basis. If the Licensing Committee was against me on this proposition, then I would further submit that: The Police, Public Order and Criminal Justice (Scotland) Act 2006 states that there are four considerations which the Council must take into account when considering a notification received from a procession organiser and whether it is necessary to prohibit or impose conditions on a public procession. These four conditions are: 1. Public Safety 2. Public Order 3. Damage to property 4. Disruption to the life of the community It is submitted that none of these four conditions is engaged by objections of the Complainers. What risk to public safety is there if L.O.L District No.65 traverses its chosen route? What risk to public order? Is it being seriously suggested that there is a probability of damage to property if the procession follows the organiser's chosen route? Perhaps the objectors will tell us how the procession is likely to disrupt the life of the community if it goes ahead as planned? The procession has been conducted in Dunkeld for 16 years and I would put forward the proposition that if any of the four factors of risk to public safety, public order, damage to property and disruption to the life of the community had been encountered in the last 16 years then this would have come to the attention of the statutory authorities and Perth & Kinross Council long before now. 7/8 There is no such report from Police Scotland and the organiser is, therefore, entitled to conclude that, apart from the rather nebulous comments of the objectors, there are none. We submit that our views are consistent with the European Court of Human Rights requirements that it is "the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully". I would ask the Licensing Committee to uphold the democratic right of freedom of peaceful public assembly, to approve the organiser's procession at the time, date & routes duly submitted to the local authority, to repel the objections of the objectors and the suggestion that a TTRO should be obtained by this organisation.

The objections also state links to some organisation that I've never heard of so I would suggest these comments be completely disregarded.

David Walters

Event's Organiser



## Civic Licensing

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**From:** Tom Wilde  
**Sent:** 11 July 2023 20:38  
**To:** Civic Licensing  
**Subject:** Objection to Orange order march in Dunkeld on 20/08/23

Dear Civic licensing team

I am writing in objection to the pending application for the orange order to hold a procession through Dunkeld on the 20/08/23. I am objecting on a number of grounds. After last year's procession members of the orange order who had taken part in the parade went on to abuse local people on social media who had objected to the march.

This clearly shows that the orange order group organising this are hostile to local people and allowing this procession to take place is a danger to the community. The procession has also in previous years invited onlookers sporting UDF emblems which as a terrorist group also breaches the rules set out in code for applying for a procession or parade.

Yours sincerely  
Tom Wilde

