

*These notes relate to the Police, Public Order and Criminal Justice (Scotland)
Act 2006 (asp 10) (asp 10) which received Royal Assent on 4 July 2006*

POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)

EXPLANATORY NOTES

ANNEX A: PART 5 OF THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (C.45)
(Nb This Text is Provided for Guidance Only and Accuracy is Not Warranted)

KEY

New = *this is new text inserted by the Act*
text

inserted

Text = this is existing text which has been deleted or repealed

deleted

or

repealed

“PART V

PUBLIC PROCESSIONS

62 Notification of processions

- (1) A person proposing to hold a procession in public shall give written notice of that proposal in accordance with subsections (2) and (3) below—
 - (a) to the local authority in whose area the procession is to be held, or if it is to be held in the areas of more than one such authority, to each such authority;
 - (aa) if the procession is to be held to any extent in a National Park, to the National Park authority for the National Park; and
 - (b) to the chief constable.
- (2) Notice shall be given for the purposes of subsection (1) above by—
 - (a) its being posted to the main office of the local authority and (where subsection (1)(aa) applies) of the National Park authority and to the office of the chief constable so that in the normal course of post it might be expected to arrive not later than 7 28 days before the date when the procession is to be held; or
 - (b) its being delivered by hand to those offices not later than 7 28 days before that date.
- (3) The notice to be given under subsection (1) above shall specify—
 - (a) the date and time when the procession is to be held;
 - (b) its route;
 - (c) the number of persons likely to take part in it;
 - (d) the arrangements for its control being made by the person proposing to hold it; and
 - (e) the name and address of that person.
- (4) A local authority may, on application in accordance with subsection (5) below by a person proposing to hold a procession in public in their area—
 - (a) made to them;
 - (aa) if the procession is to be held to any extent in a National Park, intimated to the National Park authority for the National Park; and
 - (b) intimated to the chief constable,within the period of 7 28 days before the date when the procession is to be held, make an order dispensing with the requirements of subsection (2) above in relation to the time limits for the giving of notice of that proposal.
- (5) An application under subsection (4) above shall specify the matters mentioned in subsection (3) above –

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- (a) *set out the reason why notice of the proposal was not given in accordance with subsections (1) and (2) above; and*
 - (b) *specify the matters mentioned in subsection (3) above,*
- and where an order has been made under the said subsection (4), the application for it shall be treated as notice duly given for the purposes of subsection (1) above.
- (6) A local authority may (whether upon application made to them or not) make an order exempting any person proposing to hold any procession in public being a procession specified in the order or one of a class of processions so specified from the requirement under this section to give notice to the authority of the proposal to hold that procession.
- (7) This section does not apply in relation to processions commonly or customarily held; but a local authority may, as respects their area, order that it shall apply to any such procession so held or any such class of processions so held as is specified in the order.
- (8) An order under subsection (6) or (7) above may—
 - (a) provide that its application in any case or class of cases is subject to such conditions as may be specified in the order;
 - (b) classify processions by reference to any factor or factors whatsoever;
 - (c) be varied or revoked by subsequent order made in like manner.
- (9) The local authority shall, before making an order under subsection (4) above or making, varying or revoking an order under subsection (6) or (7) above, consult the chief constable.
- (11) The local authority shall, as soon as possible after they make, vary or revoke an order under subsection (6) or (7) above, give public notice of that fact in a newspaper or newspapers circulating in their area.
- (11A) *A local authority shall, as soon as possible after making an order under subsection (4) above, publicise that fact in such manner as they think fit and send a copy of the order to the applicant.*
- (11B) *This section does not apply to a procession—*
 - (a) *which is a funeral procession organised by a funeral director acting in the ordinary course of his business; or*
 - (b) *which is specified in, or is within a description specified in, an order made by the Scottish Ministers.*
- (11C) *In subsection (11B) above, a “funeral director” is a person whose business consists of or includes the arrangement and conduct of funerals.*
- (11D) *An order made for the purposes of subsection (11B)(b) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.*
- (12) In this section and in sections 63 to 65 of this Act—
 - “procession in public” means a procession in a public place;
 - “chief constable” means, in relation to a local authority, the chief constable of the police force for the area which comprises or includes the area of the authority; and
 - “public place” has the same meaning as in Part II of the Public Order Act 1986.

63 Functions of regional and islands councils in relation to processions

- (1) The local authority may, after consulting the chief constable and (where section 62(1) (aa) of this Act applies) the National Park authority in respect of a procession notice of which has been given or falls to be treated as having been given in accordance with section 62(1) of this Act, make an order—

- (i) prohibiting the holding of the procession; or
 - (ii) imposing conditions on the holding of it.
- (1A) Where notice of a proposal to hold a procession has been given or falls to be treated as having been given in accordance with section 62(1) of this Act—
 - (a) if a local authority have made an order under subsection (1) above they may at any time thereafter, after consulting the chief constable and (where subsection (1)(aa) of that section applies) the National Park authority, vary or revoke the order and, where they revoke it, make any order which they were empowered to make under that subsection;
 - (b) if they have decided not to make an order they may at any time thereafter, after consulting the chief constable and (where subsection (1)(aa) of that section applies) the National Park authority, make any order which they were empowered to make under that subsection.
- (2) The conditions which may be imposed under subsection (1) or (1A) above on the holding of a procession may include conditions—
 - (a) as to the date, time and duration of the procession;
 - (b) as to the route to be taken by it;
 - (c) prohibiting its entry into any public place specified in the order.
- (3) A local authority shall—
 - (a) where notice of a proposal to hold a procession has been given or falls to be treated as having been given in accordance with section 62(1) of this Act, deliver at least 2 days before the date when, in terms of the notice, the procession is to be held, to the person who gave the notice—
 - (i) where they have made an order under subsection (1) or (1A) above, a copy of it and a written statement of the reasons for it;
 - (ii) where they decide not to make an order under subsection (1) above or to revoke an order already made under subsection (1) or (1A) above, notification of that fact;
 - (iii) where they have, under subsection (1A) above, varied such an order, a copy of the order as varied and a written statement of the reasons for the variation; and
 - (b) where they have made an order under subsection (1) or (1A) above in relation to a proposal to hold a procession, make such arrangements as will ensure that persons who might take or are taking part in that procession are made aware of the fact that the order has been made and, if the order has been varied under subsection (1A) above, that it has been so varied and of its effect; and
 - (c) where they have revoked an order made under subsection (1) or (1A) above in relation to a proposal to hold a procession, make such arrangements as will ensure that persons who might take or are taking part in that procession are made aware of the fact that the order has been revoked.
- (4) The local authority shall comply with subsection (3) above—
 - (a) as early as possible;
 - (b) only insofar as it is reasonably practicable for them to do so.
- (5) *The local authority may, after consulting the chief constable and (where section 62(1)(aa) of this Act applies) the National Parks Authority, make an order—*
 - (a) *imposing conditions on the holding of a procession to which paragraph (a) of subsection (11B) of section 62 of this Act relates;*
 - (b) *prohibiting or imposing conditions on the holding of a procession to which paragraph (b) of that subsection relates.*
- (6) *Subsections (1A), (3) and (4) above apply in relation to an order made under subsection (5) above and to a decision not to make an order under that subsection as*

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they apply to an order under subsection (1) above and to a decision not to make an order under that subsection respectively, but with the modifications set out in subsection (7) below.

- (7) *Those modifications are—*
- (a) *the references to notice having been or falling to be treated as having been given shall be ignored;*
 - (b) *the reference to the person who gave the notice shall be treated as a reference to the person appearing to the local authority to be the person who is to hold the procession;*
 - (c) *the words “not to make an order under subsection (1) above or” in subsection (3)(a)(ii) shall be ignored.*
- (8) *The considerations to which the local authority shall have regard when deciding whether to prohibit the holding of a procession or impose conditions on it under this section 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;*
 - (iv) *disruption to 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.*
- (9) *The local authority shall compile, maintain and make available to the public, free of charge, a list containing information about—*
- (a) *processions which have, after the coming into force of this subsection, been held in their area;*
 - (b) *proposed processions which they have, after that time, prohibited under this section.*
- (10) *A local authority shall 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 this subsection is enabled to receive information about processions which are to or might be held in that area or in any part of it specified in the request.*

64 Appeals against orders under section 63

- (1) *An appeal to the sheriff shall lie at the instance of a person who, in accordance with section 62 of this Act, has or falls to be treated as having given notice of a proposal to hold a procession in public against—*
- (a) *an order made under section 63(1) or (1A) of this Act; or*

- (b) a variation under section 63(1A) of this Act of an order made under section 63(1) or (1A),
in relation to the procession.
- (2) An appeal under this section shall be made by way of summary application and shall be lodged with the sheriff clerk within 14 days from the date on which the copy of the order and statement of reasons were received by the appellant.
- (3) On good cause being shown, the sheriff may hear an appeal under this section notwithstanding that it was not lodged within the time mentioned in subsection (2) above.
- (4) The sheriff may uphold an appeal under this section only if he considers that the local authority in arriving at their decision to make or, as the case may be, to vary the order—
- (a) erred in law;
 - (b) based their decision on any incorrect material fact;
 - (c) exercised their discretion in an unreasonable manner; or
 - (d) otherwise acted beyond their powers.
- (5) In considering an appeal under this section the sheriff may hear evidence by or on behalf of any party to the appeal.
- (6) Subject to subsection (7) below, on an appeal under this section, the sheriff may—
- (a) uphold the appeal and—
 - (i) remit the case, with the reasons for his decision, to the local authority for reconsideration of their decision, or
 - (ii) if he considers that there is insufficient time for the case to be remitted under sub-paragraph (i) above *quash* the order which is the subject of the appeal, *vary it* or make *in substitution for the order* any such order as the authority were empowered to make under section 63(1) of this Act; or
 - (b) dismiss the appeal,
- and on remitting a case under paragraph (a)(ii) above, the sheriff may—
- (i) specify a date by which the reconsideration by the authority must take place;
 - (ii) modify any procedural steps which otherwise would be required to be taken in relation to the matter by or under any enactment (including this Act).
- (7) The sheriff shall not exercise any of his powers under subsection (6) above unless he is satisfied that all steps which in the circumstance were reasonable have been taken with a view to securing that notice of the appeal and an opportunity of being heard with respect to it have been given to the authority whose order or, as the case may be, the variation of whose order under section 63 of this Act is the subject of the appeal.
- (8) The sheriff may include in his decision on an appeal under this section such order as to the expenses of the appeal as he thinks proper.
- (9) Any party to an appeal to the sheriff under this section may appeal on a point of law from the decision of the sheriff to the Court of Session within 28 days from the date of that decision.

65 Offences and enforcement

- (1) Subject to subsection (3) below, a person who holds a procession in public—
- (a) without *not*—
 - (i) having given or being a person who is treated as having given notice in accordance with section 62 of this Act of his proposal to do so; and

- (ii) there being in force in relation to the procession an exempting order under section 62(6) of this Act;
- (b) in contravention of an order under section 63(1) or (1A) or 64(6)(a)(ii) of this Act prohibiting the holding of it;
- (c) otherwise than in accordance with a condition imposed by an order under section 63(1) or (1A) or 64(6)(a)(ii) of this Act in relation to the procession; or
- (d) otherwise than in accordance with the particulars of its date, time and route specified—
 - (i) in the notice given under section 62(1) to (3) of this Act; or
 - (ii) where an order has been made under subsection (4) of that section, in the application for the order

except to the extent that a condition referred to in paragraph (c) above relates to its date, time or route,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale or to imprisonment for a period not exceeding 3 months or to both.

- (2) Subject to subsection (3) below, a person who takes part in a procession in public—
 - (a) in respect of which—
 - (i) notice has not been or is not treated as having been given in accordance with section 62 of this Act; and
 - (ii) there is not in force an exempting order under section 62(6) of this Act in relation to the procession;
 - (b) in relation to which an order has been made under section 63(1) or (1A) or 64(6)(a)(ii) of this Act prohibiting the holding of it;
 - (c) which is held otherwise than in accordance with a condition imposed by an order under section 63(1) or (1A) or 64(6)(a)(ii) of this Act in relation to the procession; or
 - (d) which is held otherwise than in accordance with the particulars of its date, time and route specified—
 - (i) in the notice given under section 62(1) to (3) of this Act; or
 - (ii) where an order has been made under subsection (4) of that section, in the application for the order

except to the extent that a condition referred to in paragraph (c) above relates to its date, time and route

and refuses to desist when required to do so by a constable in uniform shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

- (3) This section does not apply to processions commonly or customarily held except that it applies to a procession so held if there is in force in relation to it an order under section 62(7) of this Act.
- (3) *This section applies to a procession of the description set out in section 62(11B)(a) of this Act (funeral processions) only to the extent that the procession has been held otherwise than in accordance with conditions imposed under this Part of this Act.*
- (3A) *This section applies to a procession which is within section 62(11B)(b) of this Act (processions specified by order) only if and to the extent that it has been prohibited or conditions imposed on it under this Part of this Act.*
- (4) Subject to subsection (5) below, a constable may arrest without warrant a person whom he reasonably suspects of committing or having committed an offence under this section.

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- (5) A constable who is not in uniform shall produce his identification if required to do so by any person whom he is arresting under subsection (4) above.

65A *Guidance to local authorities*

The local authority shall, in carrying out functions under this Part of this Act, have regard to any guidance in that respect issued by the Scottish Ministers.

66 **Relationship of sections 62 to 65 with Public Order Act 1986**

Sections 62 to 65 of this Act are subject to the Public Order Act 1986; and, without prejudice to that generality—

- (a) an order under those sections, so far as relating to the same matters as those to which any directions given under section 12 of that Act relate, shall be subject to those directions; and
- (b) anything done in conformity with any such directions or omitted, in conformity therewith, to be done shall not be an offence under section 65 of this Act.