

# Equality and Human Rights Impact Assessment - the Form

There are separate guidance notes to accompany this form – “Equality and Human Rights Impact Assessment – the Guide.” Please use these guidance notes as you complete this form. Throughout the form, **proposal** refers to policy, strategy, plan, procedure, report or business case, embracing a range of different actions such as setting budgets, developing high level strategies and organisational practices such as internal restructuring.

## STEP 1: Identify essential information

1. Committee Report No.

2. Name of proposal.

The Scottish National Front has notified the Council of their intention to march from the Adelphi along Union Street to Union Terrace Gardens from 6-8 pm on 20/04/12 where they will hold a demonstration against the SNP.

3. Officer(s) completing this form.

Name	Designation	Service	Directorate
Sandra Bruce Faiza Nacef	Strategist Development Officer	Customer Service and Performance	Corporate Governance
Sarah Clubley	Solicitor	Legal and Democratic	Corporate Governance

4. Date of Impact Assessment.

5. When is the proposal next due for review?

6. Committee Name.

7. Date the Committee is due to meet.

8. Identify the Lead Council Service and who else is involved in delivering this proposal (for example other Council services or partner agencies).

The City Events Team within Economic & Business Development has the ongoing responsibility of managing the Parks and Outdoor Spaces.

The Special Events Working Group is consulted on licensing applications. The Special Events Working Group is made up of officers from the City Events Team and the Emergency Services including Grampian Police.

9. Please summarise this Equality and Human Rights Impact Assessment (EHRIA). This must include any practical actions you intend to take or have taken to reduce, justify or remove any adverse negative impacts. **Please return to this question after completing the EHRIA.**

The purpose of this Equality and Human Rights Impact Assessment is to outline to the Licensing Committee the Equalities and Human Rights issues they should take into account when assessing whether or not the proposed march by the Scottish National Front should be prohibited or whether conditions should be imposed upon the march.

The key Human Rights issues are set out below.

Article 11 of the European Convention on Human Rights provides that **everyone** has the right to freedom of peaceful assembly and covers public processions which may annoy or give offence to people opposed to the ideas or claims that the public procession in question is seeking to promote. The right to freedom of peaceful assembly means the right to protest in a **peaceful** way.

Article 11 is, however, a qualified right with Article 11(2) providing that the right to protest can be restricted in certain ways. Any restriction must be lawful, and in pursuit of a legitimate aim such as:

- national security;
- public safety;
- the prevention of disorder or crime;
- for the protection of health or morals: or
- the protection of the rights and freedoms of others

The restriction must also be proportionate, meaning that the measures taken are the least restrictive necessary to achieve the legitimate aim.

In order to comply with its obligations under the Human Rights Act 1998, the Licensing Committee may only prohibit/ impose conditions on the proposed march if the tests set out in Article 11 (2) are met.

To assist the Committee in making an assessment whether the constitutive parts of Article 11 (2) are met, its various elements are scrutinised in detail below:

### **Legality**

The right to protest, to freedom of assembly and freedom of expression are protected by Articles 11 and 10 of the European Convention on Human Rights respectively.

These rights protect expression and protest even where it may "offend, shock or disturb the State or any sector of the population." There is also a positive obligation to take reasonable steps to facilitate the right to freedom of assembly, and to protect participants in peaceful demonstrations from disruption by others. Where expression attacks the principles of pluralism and broadmindedness which underpin the Convention, however, for example through hate speech, it must be ensured interpretation of the rights is not applied in a way which is inconsistent with these values (Article 17 of the ECHR).

In addition, Aberdeen Sheriff Court held that Aberdeen City Council acted unlawfully when a march by the Aberdeen Bon-Accord Loyal Orange Lodge 701 was banned - as a violation of the right under Article 11 - right to assembly. The court held that it is for the authority to show that it is necessary to curtail the basic right before any such restriction will be upheld ... their reasons must be relevant and sufficient and their response proportionate.

Aberdeen City Council does have legal authority to interfere with right to protest in terms of the Civic Government (Scotland) Act 1982. This Act gives local authorities powers to prohibit or impose conditions on a march. These powers can only be exercised after consultation with the Chief Constable.

Additionally, public sector bodies such as Aberdeen City Council have a general duty under the Equality Act 2010. This general duty requires public bodies to pay due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities. These requirements apply across the protected characteristics of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex and sexual orientation. The Equality and Human Rights Commission commented that Aberdeen City Council would be failing in its duty if it allowed the march to go ahead given the negative impact the march is likely to have on fostering good relations.

Traffic Legislation may also provide Aberdeen City with legal authority to prohibit or impose conditions on the march.

### **Legitimate aim**

The legitimate aims stated under Article 11 (2) are:

- national security;
- public safety;
- the prevention of disorder or crime;
- for the protection health or morals; or
- the protection of the rights and freedoms of others

If the march is to be prohibited or conditions imposed there are only three legitimate aims that appear relevant for doing so:

### **Prevention of Disorder or Crime/Public Safety**

Grampian Police are best placed to advise whether the proposed march is likely to result in public disorder or should be prohibited on the grounds of public safety. Please see the Police Response to Aberdeen City Council Licensing Team which raises concerns about the genuine risk to public safety and potential damage to nearby property should the application for the march be approved.

The points members of the Licensing Committee may wish to take into account when assessing whether the march is likely to result in public disorder or raises public safety concerns are as follows:

- The view of Grampian Police is critical in assessing whether the proposal is likely to result in public disorder and assessing whether there are public safety concerns.
- The march is planned for Friday 20<sup>th</sup> April between 6 – 8 pm. This is the date of Hitler's birthday. The fact this march will fall upon Hitler's birthday has been highlighted and commented upon by the local media. The Scottish National Front has advised that this was not the reason for their choice of date. However, given the far right nationalist views that the Scottish National Front associates itself with and espouses, the significance of this date cannot be ignored. It also brings into focus the intention of the Scottish National Front to hold a peaceful procession. It is arguable that holding the march on this date is an inflammatory gesture by the Scottish National Front.
- The march is timed for 6 – 8pm on a Friday night. Union Street is busy at this time and it is likely that some of the onlookers to the march may have consumed alcohol. Onlookers who have consumed alcohol are more likely to be less inhibited in their response. That said, members should be aware that the right under Article 11 to protest peacefully covers public processions which may annoy or give offence to people opposed to the ideas or claims the public march in question is seeking to promote. It is of the essence of a civilised democratic society that many points of view may be expressed in public and participants in a peaceful demonstration can do so without having to fear that they will be subjected to physical violence by their opponents.
- The Scottish National Front intends to start its march from the Adelphi. The Adelphi is where the Aberdeen Trades Union Council (who in the past has opposed the far rights views expressed by the Scottish National Front) is based. Members may consider that the starting point has been chosen to generate a response from Trade Union members and again calls into question whether the Scottish National Front truly intends to hold a peaceful demonstration.
- It has become apparent that Aberdeen Trades Union Council intend to hold a counter march if the proposal by Scottish National Front is granted. Members should balance the proposed march with the advice of Grampian Police.

### **Protection of the Rights and Freedoms for others**

Members will be aware of the far right nationalist views the Scottish National Front associates itself with and espouses such as the recriminalisation of homosexuality, repatriation of immigrants of non-European descent and closing of borders to immigrants. These views are offensive to many members of the public and particularly those with protected characteristics. This is demonstrated by the fact that only 201 votes (0.8%) of the total electoral votes were cast for the Scottish National Front candidate in the Aberdeen Central constituency in the Scottish Parliamentary elections of May 2011.

The Scottish National Front has intimated that the march is being held as a demonstration against the SNP. In doing so it is likely that Scottish National Front will convey their far right nationalist views as to how Scotland could be different. The way

in which the Scottish National Front intends to convey their views will be critical in assessing whether it will impinge the rights and freedoms of others. If the Scottish National Front intends to use “hate” speech then this will likely cause fear and alarm in those with protected characteristics.

### **Proportionality of Response**

As outlined above any restriction/prohibition must also be proportionate, meaning that the measures taken are the least restrictive necessary to achieve the legitimate aim. Members should consider whether there is a pressing social need to interfere here. For example, members should weigh up the likelihood of public disorder and the advice of Grampian Police in making this assessment.

Interference with these rights, (e.g. restricting the right to protest in any way through re-routing, policing or even refusing the application all together etc) may be permitted but only where the interference is in pursuit of a legitimate aim, such as for the prevention of disorder or crime or for public safety, and any interference must be necessary and proportionate, i.e. the minimum necessary interference to achieve the aim. When considering whether any restriction of the rights is proportionate there must be "relevant and sufficient" reasons for the actions and the Licensing Committee must be able to demonstrate that the decision is based on an acceptable assessment of the relevant facts.

10. Where will you publish the results of the Equality and Human Rights Impact Assessment? Tick all that apply.

- Para 9 of EHRIA will be published in committee report in Section 6 “Impact”  
 Full EHRIA will be attached to the committee report as an appendix  
 Copied to Equalities Team to publish on the Council website

### **STEP 2: Outline the aims of the proposal**

11. What are the main aims of the proposal?

The applicant is seeking permission to march from the Adelphi along Union Street to Union Terrace Gardens where they will hold a rally against the SNP Government. The name of the event is “Save our Scotland from the SNP”.

This links to the application made to the Events Team, Aberdeen City Council for permission to stage a rally in Union Terrace Gardens on the same evening.

12. Who will benefit most from the proposal?

The Scottish National Front and its supporters.

13. Tell us if and how the proposal will increase equality of opportunity by permitting positive action to redress disadvantage?

It may have the reverse effect. It is difficult to see how this proposal will assist the Council in complying with its statutory duty to advance equality of opportunity and to foster good relationships between the different protected characteristics.

14. What impact will the proposal have on promoting good relations and wider community cohesion?

Again, it is difficult to see what contribution this march will make to good community relations. It has the potential to negatively impact on community cohesion for a variety of reasons. If this march goes ahead it has the potential to raise fear and alarm among marginalised, vulnerable groups such as the Lesbian Gay Bisexual and Transgender and ethnic minority (including Gypsy/ Traveller) communities given the extreme right wing views the Scottish National Front is likely to convey during the march and could potentially trigger social disquiet, disorder and violence. The march is planned for Union Street in the early Friday evening and will have significant traffic ramifications.

### STEP 3: Gather and consider evidence

15. What **evidence** is there to identify any potential positive or negative impacts in terms of consultation, research, officer knowledge and experience, equality monitoring data, user feedback and other?

Consultation has taken place with the Equality and Human Rights Commission who are of the view that it will contribute nothing to fostering good community relations.

Aberdeen Trades Council, UNITE and other unions are against the march because of their perception of the far right wing views of the National Front and Aberdeen TUC intend to hold a counter anti-Fascism march.

The local branch representatives of the Terrence Higgins Trust and also North East Scotland Transgender have raised concerns about the march. Both representatives were concerned about the timing of the march on a Friday evening when there will be some people around who have been drinking. Both representatives felt the timing was likely to generate a negative reaction which could in turn further fuel community tension.

The view of Grampian Regional Equality Council is that "this group should not be provided with a platform for their extreme racist views".

The Scottish Human Rights Commission has also been consulted and advised that elected members be presented with the full human rights implications of allowing the march to go ahead, so that they can make an informed decision.

The march is planned for April 20<sup>th</sup>. Whilst the Scottish National Front advises the date was chosen as it is the inaugural date of the British Party it is also Hitler's birthday. This fact has been highlighted by the local media.

Information from the City Events Team is as follows:

The Scottish National Front has applied to use Union Terrace Gardens to stage a demonstration against the SNP government.

Both applications (i.e. the march proposal and the use of Union Terrace Gardens for a

rally) were referred to the Special Events Working Group for consideration by City Events, Grampian Police and other members of the emergency services.

Although the City Events Team are not responsible for the provision of licences, they are consulted on all licensing applications to ensure they do not affect existing events in the city, impact on the city's traffic management infrastructure and meet with all relevant event health & safety requirements.

In relation to the demonstration/rally in Union Terrace Gardens the view of the city Events Team is that the venue is out of sight lines and noise will be dampened by the surrounding environment, so the demonstration/rally should not impact on the public at street level.

Giving due consideration, it was agreed that Special Events Working Group would not support the march route as proposed by the applicant.

Over the years, Special Events Working Group have agreed that all marches and processions will be managed to ensure that live traffic and march participants will be segregated to ensure safety at all times and to minimise disruption in the city centre. This is managed by a Temporary Traffic Regulation Order or by a rolling road closure staffed by Grampian Police Officers. A Temporary Traffic Regulation Order on Union Street at 6pm on a Friday night would not be supported due to the traffic management implications for the whole of the city centre.

The Special Events Working Group's comments have been supplied to Licensing on the march application.

The Special Events Working Group also advised that since submitting the Parks & Outdoor Spaces Application, the applicant indicated that should the event at Union Terrace Gardens be successful, then it was likely that the march request would be retracted.

This was the applicant's position prior to the recent press coverage in relation to the Parade Application. There has been no further contact with the applicant to determine their current position.

#### **STEP 4: Assess likely impacts on people with Protected Characteristics**

16. Which, if any, people with protected characteristics and others could be affected positively or negatively by this proposal? Place the symbol in the relevant box. Be aware of cross-cutting issues, such as older women with a disability experiencing poverty and isolation.

(Positive +, neutral 0, - negative)

Protected Characteristics					
Age - Younger Older	-	Disability	-	Gender Reassignment*	-
Marriage or Civil Partnership	0	Pregnancy and Maternity	0	Race**	-
Religion or Belief	-	Sex (gender)***	0	Sexual orientation****	-
Others e.g. poverty	0				

Notes:

\* Gender Reassignment includes Transgender

\*\* Race includes Gypsies/Travellers

\*\*\* Sex (gender) i.e. men, women

\*\*\*\* Sexual orientation includes LGB: Lesbian, Gay and Bisexual

17. Please detail the potential positive and/or negative impacts on those with protected characteristics you have highlighted above. Detail the impacts and describe those affected.

<p>Positive impacts (describe protected characteristics affected)</p>	<p>Negative Impacts (describe protected characteristics affected)</p> <p>Potential for groups who have been historically at more risk of experiencing disadvantage and discrimination to perceive this march as threatening and intimidating, given previous views expressed by the National Front movement and reported in the media. For example, the National Front has previously called for homosexuality to be recriminalized.</p> <p>Because of perceived links to fascism, groups who may experience most disquiet are older people who remember World War II, and other protected characteristics who may feel more at risk . These protected characteristics may include religion or belief, disability, gender reassignment, race and sexual orientation.</p>
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**STEP 5: Human Rights - Apply the three key assessment tests for compliance assurance**

18. Does this proposal/policy/procedure have the potential to interfere with an individual's rights as set out in the Human Rights Act 1998? State which rights might be affected by ticking the appropriate box(es) and saying how. **If you answer "no", go straight to question 22.**

- Article 3 – Right not to be subjected to torture, inhumane or degrading treatment or punishment
- Article 6 – Right to a fair and public hearing
- Article 8 – Right to respect for private and family life, home and correspondence
- Article 10 – freedom of expression
- Other article not listed above

**How?**

The Scottish National Front members may argue their right to freedom of expression is being interfered with (Article 10), Article 9 Freedom of thought, conscience and religion and Article 11 Freedom of association and assembly.

**Legality**

19. Where there is a potential negative impact is there a legal basis in the relevant domestic law?

The right to protest, to freedom of assembly and freedom of expression are protected by Articles 11 and 10 of the European Convention on Human Rights respectively. These rights protect expression and protest even where it may "offend, shock or disturb the State or any sector of the population." There is also a positive obligation to take reasonable steps to facilitate the right to freedom of assembly, and to protect participants in peaceful demonstrations from disruption by others. Where expression attacks the principles of pluralism and broadmindedness which underpin the Convention, however, for example through hate speech, it must be ensured interpretation of the rights is not applied in a way which is inconsistent with these values (Article 17 of the ECHR).

In addition, Aberdeen Sheriff Court held that Aberdeen City Council acted unlawfully when a march by the Aberdeen Bon-Accord Loyal Orange Lodge 701 was banned - as a violation of the right under Article 11 - right to assembly. The court held that it is for the authority to show that it is necessary to curtail the basic right before any such restriction will be upheld ... their reasons must be relevant and sufficient and their response proportionate.

If this proposal were to be rejected, then there may be a challenge that the human rights of the Scottish National Front group members had been breached. This needs to be weighed up against the potential negative impact on the groups with protected characteristics.

**Legitimate aim**

20. Is the aim of the policy identified in Steps 1 and 2 a legitimate aim being served in terms of the relevant equality legislation or the Human Rights Act?

The legitimate aims stated under Article 11 (2) are:

- national security;
- public safety;
- the prevention of disorder or crime;
- for the protection health or morals; or
- the protection of the rights and freedoms of others

If the march is to be prohibited or conditions imposed there are only three legitimate aims that appear relevant for doing so:

**Prevention of Disorder or Crime/Public Safety**

Grampian Police are best placed to advise whether the proposed march is likely to result in public disorder or should be prohibited on the grounds of public safety. Please see the Police Response to Aberdeen City Council Licensing Team which raises concerns about the genuine risk to public safety and potential damage to nearby property should the application for the march be approved.

The points members of the Licensing Committee may wish to take into account when assessing whether the march is likely to result in public disorder or raises public safety concerns are as follows:

- The view of Grampian Police is critical in assessing whether the proposal is likely to result in public disorder and assessing whether there are public safety concerns.
- The march is planned for Friday 20<sup>th</sup> April between 6 – 8 pm. This is the date of Hitler's birthday. The fact this march will fall upon Hitler's birthday has been highlighted and commented upon by the local media. The Scottish National Front has advised that this was not the reason for their choice of date. However, given the far right nationalist views that the Scottish National Front associates itself with and espouses, the significance of this date cannot be ignored. It also brings into focus the intention of the Scottish National Front to hold a peaceful procession. It is arguable that holding the march on this date is an inflammatory gesture by the Scottish National Front.
- The march is timed for 6 – 8pm on a Friday night. Union Street is busy at this time and it is likely that some of the onlookers to the march may have consumed alcohol. Onlookers who have consumed alcohol are more likely to be less inhibited in their response. That said, members should be aware that the right under Article 11 to protest peacefully covers public processions which may annoy or give offence to people opposed to the ideas or claims the public march in question is seeking to promote. It is of the essence of a civilised democratic society that many points of view may be expressed in public and participants in a peaceful demonstration can do so without having to fear that they will be subjected to physical violence by their opponents.
- The Scottish National Front intends to start its march from the Adelphi. The Adelphi is where the Aberdeen Trades Union Council (who in the past has

opposed the far rights views expressed by the Scottish National Front) is based. Members may consider that the starting point has been chosen to generate a response from Trade Union members and again calls into question whether the Scottish National Front truly intends to hold a peaceful demonstration.

- It has become apparent that Aberdeen Trades Union Council intend to hold a counter march if the proposal by Scottish National Front is granted. Members should balance the proposed march with the advice of Grampian Police.

### **Protection of the Rights and Freedoms for others**

Members will be aware of the far right nationalist views the Scottish National Front associates itself with and espouses such as the recriminalisation of homosexuality, repatriation of immigrants of non-European descent and closing of borders to immigrants. These views are offensive to many members of the public and particularly those with protected characteristics. This is demonstrated by the fact that only 201 votes (0.8%) of the total electoral votes were cast for the Scottish National Front candidate in the Aberdeen Central constituency in the Scottish Parliamentary elections of May 2011.

The Scottish National Front has intimated that the march is being held as a demonstration against the SNP. In doing so it is likely that Scottish National Front will convey their far right nationalist views as to how Scotland could be different. The way in which the Scottish National Front intends to convey their views will be critical in assessing whether it will impinge the rights and freedoms of others. If the Scottish National Front intends to use “hate” speech then this will likely cause fear and alarm in those with protected characteristics.

### **Proportionality**

21. Is the impact of the policy proportionate to the legitimate aim being pursued? Is it the minimum necessary interference to achieve the legitimate aim?

Any restriction/prohibition must also be proportionate, meaning that the measures taken are the least restrictive necessary to achieve the legitimate aim. Members should consider whether there is a pressing social need to interfere here. For example, members should weigh up the likelihood of public disorder and the advice of Grampian Police in making this assessment.

The public authority is required to demonstrate the pressing social need for any interference as well as the demonstration of a reasonable relationship between a legitimate aim and the means chosen to achieve such aims. It means that the Council could be successfully challenged if it has a legitimate aim and is acting within its powers but it has nevertheless failed to establish a pressing social need for its interference with an individual's right or it has failed to strike the appropriate balance, the reasonable relationship between aim and means. For example, this is the critical issue in considering whether to ban or impose restrictions upon a march.

Interference with these rights, (e.g. restricting the right to protest in any way through re-routing, policing or even refusing the application all together etc) may be permitted but only where the interference is in pursuit of a legitimate aim, such as for the prevention of disorder or crime or for public safety, and any interference must be necessary and proportionate, i.e. the minimum necessary interference to achieve the aim. When

considering whether any restriction of the rights is proportionate there must be "relevant and sufficient" reasons for the actions and we must be able to demonstrate that the decisions are based on an acceptable assessment of the relevant facts.

### STEP 6: Monitor and review

22. How will you monitor the implementation of the proposal? (For example, customer satisfaction questionnaires)

Should the proposal go ahead, it can be monitored by the number of incidents reported to the police, the number of Prejudice Incident Report Forms raised and the media coverage of the march.

23. How will the results of this impact assessment and any further monitoring be used to develop the proposal?

The results of the impact assessment which includes views from the Equality and Human Rights Commission and the Scottish Human Rights Commission will assist in the decision-making process around the proposed march going forward.

### STEP 7 SIGN OFF

The final stage of the EHRIA is formally to sign off the document as being a complete, rigorous and robust assessment.

Person(s) completing the impact assessment.

Name	Date	Signature
Sandra Bruce Faiza Nacef Sarah Clubley	14 March 2012	

Quality check: document has been checked by

Name	Date	Signature
Roddy MacTaggart	15 March 2012	

Head of Service (Sign-off)

Name	Date	Signature

Equality and Human Rights Impact Assessment – the Form.

**Now –**

Please send an electronic copy of your completed EHRIA - without signatures - together with the proposal to:

Equalities Team  
Customer Service and Performance  
Corporate Governance  
Aberdeen City Council  
**Business Hub 13**  
Second Floor North  
Marischal College  
Broad Street  
Aberdeen  
AB10 1AB

Telephone 01224 523039 Email [sandrab@aberdeencity.gov.uk](mailto:sandrab@aberdeencity.gov.uk)