



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 Aberdeen TUC 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 as a counter march to the one being organised by the Scottish National Front.

3. Officer(s) completing this form.

Name	Designation	Service	Directorate
Sandra Bruce	Strategist	Customer Service and Performance	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).

Aberdeen City Events Team within Economic & Business Development and Special Events Working Group who are 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. Grampian Police will be involved on the night.

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 Aberdeen TUC 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. Having two opposing marches is likely to have a negative impact on the fostering of 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 two 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 high risk of public disorder should both marches go ahead at the same time on the same route.

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 we must be able to demonstrate that the decisions are 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?

To stage a counter anti-Fascism march against the proposed march of the Scottish National Front.

12. Who will benefit most from the proposal?

Aberdeen TUC and their supporters, people with protected characteristics who may feel at risk from the Scottish National Front march.

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

Should the Scottish National Front march go ahead, then this could be seen as a positive in that it is showing support for the groups with protected characteristics who would have felt vulnerable as a result of the Scottish National Front march.

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

As above, it shows support for the groups with protected characteristics. However, the risk to public safety and potential for damage to property may be heightened and therefore there would be a negative impact on good relations and community cohesion.

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?

Members should refer to the EHRIA for the Scottish National Front proposed march and to the Grampian Police Response to Aberdeen City Council Licensing Team. This states that the application appears to be a deliberate attempt to disrupt the original parade application by the Scottish National Front and that the Police would not be in a position to facilitate two marches at the same time on the same route, where there is a very high risk of public disorder without utilising significant Police resources and the resources of partner agencies.

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		Pregnancy and Maternity		Race**	+
Religion or Belief	+	Sex (gender)***		Sexual orientation****	+
Others e.g. poverty	-				

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.

Positive impacts (describe protected characteristics affected) Because of perceived links of National Front Movement to fascism, groups with protected characteristics may feel better supported.	Negative Impacts (describe protected characteristics affected) Because of potential for disorder/crime and risk to public safety with two opposing matches, community at large may be at greater risk.
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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 Aberdeen TUC 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 Aberdeen TUC group members had been breached.

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

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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 high risk of public disorder should both marches go ahead at the same time on the same route.

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 the Licensing Committee must be able to demonstrate that the decision is 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, this can be monitored through media coverage of the event, complaints from Scottish National Front and supporters, number of reports and occurrences of crime and disorder.

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 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	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

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