

<b>Meeting</b>	<b>SPA Policing Performance Committee</b>
<b>Date</b>	<b>28 May 2020</b>
<b>Location</b>	<b>Teleconference</b>
<b>Title of Paper</b>	<b>Joint Position on the Management of Temporary Traffic Restriction Orders (TTROs)</b>
<b>Presented By</b>	<b>Chief Supt, Sharon Milton</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>No</b>

**PURPOSE**

The purpose of this report is to provide the SPA chair with an update on developments concerning Temporary Traffic Regulation Orders (TTROs).

Members are invited to discuss the content of this paper.

## 1. BACKGROUND

- 1.1 Police Scotland is regularly involved in the policing of events such as galas, marches and parades, many of which take place either wholly or partly on public roads, or heavily impact on the road network as spectator's access and egress the venue. There is currently no single policy in place for the management of events on roads. Practice in this regard has traditionally been disparate and subject of considerable regional variation. The issue was initially raised in 2014 and since that date the subject has been considered at great length and detail with competing groups expressing differing views.
- 1.2 In Oct 2016, Dr Michael Rosie published his Independent Report on Marches, Parades and Static demonstrations. He recommended that Police Scotland seek legal advice regarding the application of TTROs. In view of this, Police Scotland obtained Counsel Opinion from advocate John MacGregor in April 2017.
- 1.3 This opinion stated that the common law powers available to police did not extend to a power to close roads or regulate traffic for pre-planned events. Furthermore, that the primary responsibility for roads rests with the appropriate roads authority, be that the relevant Local Authority or Transport Scotland for trunk roads. A formal policy was thereafter devised and a guidance document issued to divisional commanders on 19<sup>th</sup> October 2017.
- 1.4 Subsequent feedback and challenge to the position was received from stakeholders leading to the formation of a 'Tripartite Working Group (TWG)' (with representatives from Police Scotland, COSLA and Scottish Government). Over a number of meetings and through continued correspondence spanning the subsequent period, the group deliberated on a number of conflicting legal opinions (obtained by some Local Authorities and other interested stakeholders), which afforded contrasting interpretations of relevant law.
- 1.5 In order to resolve the continued impasse, a further Tripartite Working Group meeting took place on 16<sup>th</sup> April 2019 and was attended by ACC Mark Williams and Eleanor Gaw (SPA). The Group proposed to provide a definitive resolution to the matter by way of a jointly secured legal opinion from 'Senior' Counsel which would seek to consolidate the approached adopted by all agencies. This approach was subsequently endorsed by PSOS and COSLA Executive representatives.

## 2. FURTHER DETAIL ON THE REPORT TOPIC

- 2.1 In July, 2019, following a joint selection process, Advocate, Gerry Moynihan Q.C was chosen to undertake the task of providing a senior opinion. Thereafter the Joint Memorial for the opinion of Senior Counsel entitled "Police, Traffic and Licensing Authority Powers to Regulate Traffic at Events, Marches and Parades" was drafted and forwarded to Mr Moynihan.
- 2.2 Legal Opinion was received from Counsel in September 2019. This response was thereafter reviewed by the tripartite group, resulting in the decision being taken to submit a supplementary memorial to Counsel, which would seek further clarification of certain legal parameters and terms contained within the initial QC opinion.
- 2.3 Supplementary opinion was received in late October, 2019 after which, the combined responses were reviewed by the Tripartite group who then agreed upon a consistent interpretation of the legal opinion.
- 2.4 Following a subsequent tripartite working group meeting in December 2019, an action was proposed for the group to draft a joint guidance note, which would reflect the group consensus regarding interpretation of the new senior legal opinion. The ideal for this approach was not to produce binding terms but instead facilitate the illustration of agreed good practice in the public interest.
- 2.5 This in turn would allow for the provision of supporting documentation to underpin a nationally consistent framework for the operation of TTRO's and would further support delivery of internal briefings for Commanders and practitioners from each agency to minimise conflicts wherever possible.
- 2.6 The most recent Tripartite Group TTRO Meeting took place between on 19th Feb 2020, where an initial draft of the joint guidance document on the interpretation of QC's opinion was produced for consideration. The group agreed this first draft should focus on traffic regulation relating to ECHR events, such as marches and parades.
- 2.7 This paper was discussed and re-issued for additional revision with a projected timescale of submission by 7th March 2020 with a view to achieving a final draft by 20th March 2020.

- 2.8 Subsequent developments relating to the response to the COVID-19 Pandemic resulted in a Hiatus in TTRO activities, with Transport Scotland seeking an extension of time to consider the draft guidance.
- 2.9 An update provided by COSLA on 11<sup>th</sup> May 2020 indicated they anticipate feedback will be soon be provided by Transport Scotland enabling finalisation of the document sometime in the week commencing 18<sup>th</sup> May 2020.

### **3. POLICE SCOTLAND – WAY FORWARD**

- 3.1 Once finalised, the completed document will thereafter be incorporated into a communications plan devised by the Tripartite Group, aimed at sharing the guidance among the respective local authorities.
- 3.2 Following the completion of the initial guidance document, the intention is to produce a similar guidance document concerning the broader matter of traffic regulation at general and commercial events.
- 3.3 In addition to the efforts to produce guidance materials for police and practitioners, a paper will be drafted by the group with the intention of engaging Scottish Government on the residual traffic management issues, which remain unresolved by the legal opinion. It is hoped this may provide impetus for seeking potential new legislative provisions or improvements to existing legislation, in the wider interest of improved public service efficiency and service delivery.
- 3.4 From the outset of the Tripartite Working Group review process and pending commencement of a consistent National approach resulting from the adoption of senior legal opinion, Police Scotland has continued to risk assess events and the deployment of its officers in traffic management duties to satisfy our own staff association's observations. In addition, Police Scotland continues to engage with Local Authority's regarding the use of TTROs for pre-planned events including commercial events and where appropriate, marches and parades.
- 3.5 Further consideration on how this fits with 'Zone Ex', the deployment of Hostile Vehicle Mitigation (Deterrent) and any cost recovery approach to be implemented where TTROs are put in place, also requires to take place. As a point of note, Zone Ex is described within the 'Guide to Safety at Sports Grounds' ('Green

Guide') issued by the Sports Grounds Safety Authority as "the external zone that is in the public realm and is likely to encompass the main pedestrian and vehicle routes leading to public car parks, local train stations, bus stops and so on" and advises that it is the responsibility of all partners to agree on how this is best managed as part of a Safety Advisory Group (SAG) process.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 The financial implication for Police Scotland relates to any subsequent change to the roles and responsibilities for police deployments to manage traffic for pre-planned events. In accordance with the key essence of the Senior legal opinion, which stipulates that Counsel considers there to be a legal duty on both Police and Traffic Authorities (including local Authorities) to collaborate in selecting the appropriate powers (available to both) to enable appropriate controls to be put in place, in the wider public interest. These situational considerations will be difficult to quantify in advance and may of course see increases or decreases in demand and expense, in accordance with the outcomes of local collaborative discussions.

#### **5. PERSONNEL IMPLICATIONS**

- 5.1 There are no personnel implications for Police Scotland associated with this paper.

#### **6. LEGAL IMPLICATIONS**

- 6.1 There are legal implications associated with this paper.
- 6.2 Failure to pursue a consistent national approach concerning the deployment of officers to undertake traffic regulation duties at pre-planned events, which is founded on retained legal opinion, may compromise organisational integrity and potentially result in any aggrieved parties pursuing legal remedy.

#### **7. REPUTATIONAL IMPLICATIONS**

- 7.1 There are reputational implications associated with this paper.
- 7.2 Any subsequent impacts an agreed TTRO policy could have on event organisers, partners and local communities, for example the costs associated for facilitation of TTRO administration and deployment, may reflect on Police Scotland as it could be perceived that PSOs have precipitated the changes, albeit it is hoped the consolidated

Tripartite approach will provide confidence that decisions have been derived from sound legal counsel and in the wider public interest.

## **8. SUSTAINABILITY**

- 8.1 There are sustainability implications for Police Scotland associated with this paper in view of the potential for increased commitment of PSOS resource to manage TTRO's on a wider basis should local application of senior legal opinion determine Police deployment is both appropriate and proportionate to the event in question.

## **9. COMMUNITY IMPACT**

- 9.1 There are social implications associated with this paper.
- 9.2 Subsequent transition to a new TTRO policy may result in some commercial community events being jeopardised as a consequence of them being less financially viable (dependent on Local Authority charging policies).
- 9.3 Financial impact to event organisers such as Football Clubs may also result in enhanced discontent with PSOS stance, particularly in the wake of any ongoing COVID-19 impacts.

## **10. PARTNERSHIP IMPLICATIONS**

- 10.1 The nature of the proposed collaborative approach between Police and Roads Authorities (Incl Local Authorities) in seeking appropriate deployment of powers, may subject both to a greater degree of public and partner scrutiny and potentially challenge, particularly where any decisions result in favouring the deployment of Police resources, which will likely place a greater financial burden on event organisers. This may be particularly pronounced when involving large scale, and potentially high profile commercial events, which may be subject of differing or potentially more favourable arrangements elsewhere in the UK.
- 10.2 The efficacy of guidance document, which cannot be viewed as a binding agreement, will only become apparent once it is circulated among the Local Authorities, following which the subsequent level of collaboration and cooperation can be fully evaluated and addressed by way of subsequent engagement supported by COSLA / Scottish Govt.

## 11. ENVIRONMENT IMPLICATIONS

11.1 There are no known environmental implications associated with this paper.

### RECOMMENDATIONS

Members are invited to discuss the content of this report.