

**From:** [Munro D \(Dominic\)](#)  
**To:** [ZZZFirst Minister 2016 to 2021](#)  
**Cc:** [Rogers D \(David\) \(Constitution and Cabinet Director\)](#); [Easton A \(Aileen\)](#); [Nicolson S \(Stuart\) \(Special Adviser\)](#); [McAllister C \(Colin\)](#); [Lloyd E \(Elizabeth\)](#); [Hutchison D \(David\) \(Special Adviser\)](#); [\[Redacted\]](#) [\[Redacted\]](#) [\[Redacted\]](#) ; [Rogers S \(Shirley\)](#); [Wightman S \(Scott\)](#); [Chief Medical Officer](#); [Deputy Chief Medical Officers](#); [MacDougall A \(Audrey\)](#); [Halliday R \(Roger\)](#); [Head of COVID Analysis](#); [Hynd JS \(James\)](#); [Dornan B \(Brian\)](#); [McIntosh M \(Miranda\)](#); [Leitch J \(Jason\)](#); [Covid-19 Director](#); [Foggo R \(Richard\)](#); [Bell D \(Donna\)](#); [Director of Learning](#); [Cumming A \(Alison\)](#); [Griffin J \(Joe\)](#); [Hicks C \(Clare\)](#); [Director Communications, Ministerial Support & Facilities](#); [Director of Agriculture and Rural Economy](#); [Campbell B \(Bridget\)](#); [\[Redacted\]](#) [zzzCabinet Secretary for Communities and Local Government](#); [Cabinet Secretary for Constitution, Europe and External Affairs](#); [Cabinet Secretary for Economy, Fair Work and Culture](#); [ZZZCabinet Secretary for Finance 2020 to 2021](#); [zzzCabinet Secretary for Justice](#); [Cabinet Secretary for Rural Economy and Tourism](#); [zzzCabinet Secretary for Social Security and Older People 2018 to 2021](#); [Cabinet Secretary for the Environment, Climate Change and Land Reform](#); [Cabinet Secretary for Transport, Infrastructure and Connectivity](#); [Deputy First Minister and Cabinet Secretary for Education and Skills](#); [zzzMinister for Parliamentary Business and Veterans 2018 to 2021](#); [\[Redacted\]](#) [Evans L \(Leslie\)](#); [Executive Team](#); [Mitchell E \(Elinor\)](#); [Deputy First Minister and Cabinet Secretary for Education and Skills](#); [Cabinet Secretariat inbox](#); [Donaldson I \(Ian\)](#); [Sunderland RE \(Rachel\)](#); [Name](#)  
**Subject:** URGENT: COVID RESTRICTIONS: POSSIBLE CHANGES THAT MAY BE UNDER CONSIDERATION BY THE UK GOVERNMENT (AND DAS)  
**Date:** 10 May 2020 09:35:07  
**Attachments:** [Pre Cab and COBR sub.docx](#)  
**Importance:** High

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**PS/First Minister**

**Cc Deputy First Minister, Cabinet Secretaries,** [\[Redacted\]](#) **, Minister for Parliamentary Business and Veterans,** [\[Redacted\]](#) **, Executive Team**

Please find attached urgent submission ahead of COBR and Cabinet today.

Thanks,

Dominic Munro

Director: Exit Strategy  
(Director: Fair Work, Employability and Skills)

**Irrelevant & Sensitive**

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From Dominic Munro  
Director: Exit Strategy

10 May 2020

First Minister

Copy to:

Deputy First Minister  
Cabinet Secretaries

[Redacted]

Minister for Parliamentary Business and Veterans

[Redacted]

Executive Team

(Other officials and SPADs as per cc list at end)

**COVID RESTRICTIONS: POSSIBLE CHANGES THAT MAY BE UNDER  
CONSIDERATION BY THE UK GOVERNMENT (AND DAS)**

**PURPOSE**

1. To inform you of potential UK Government changes to lockdown restrictions that may be discussed at COBR(M) today and announced in a UKG 'Road map', and to set out proposed work to assess those and other possible options for changes.

**TIMING**

2. **URGENT.** An extraordinary Cabinet meeting has been arranged for 2 pm today following a COBR(M) at 12.45 pm.

**BACKGROUND**

3. As previously discussed at Cabinet, the First Minister announced the Scottish Government's position on the review of the lockdown measures on Thursday - in summary that the lockdown would continue but there may be scope to consider marginal changes in guidance in relation to local outdoor exercise. The evidence supporting that position was set out in *COVID-19 Framework for Analysis: Further Information* and a supporting evidence paper.

4. Health data continue to support that position of only very marginal latitude for change. The latest version of our modelling on 1 May shows that R was estimated as being between 0.71 and 0.94, and the best estimate is 0.83.

5. The number of infectious people in Scotland has fallen. For the week commencing 27 April we estimate that the number of infectious people was around

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36,000. By 5 May that number had reduced to 26,000 infectious people in Scotland. Our latest modelling shows that with an R number of around 0.8 we have little room to ease lockdown until the number of infectious individuals in the community reduces significantly.

6. Over the past week, you have joined Four Nation discussions by phone chaired by the Chancellor of the Duchy of Lancaster (Michael Gove) and by the Prime Minister, with heads of government from the other four nations also participating.

### INFORMATION ABOUT THE PLANS OF THE OTHER THREE NATIONS

#### UK Government plans

7. On the basis of the Ministerial and official-level contacts and media coverage we understand that the UKG may be considering for announcement today some or all of:

- border health-control measures (advice provided by Rachel Sunderland in her submissions of 6,7 and 9 May);
- steps towards reopening schools and nurseries, possibly with a specific start date for full or phased reopening from 1 June;
- publication by BEIS of safe working guidance for business;
- an update on its work to develop a Test, Track and Trace system;
- regulatory changes on opening of garden centres and recycling centres;
- easing of restrictions on outdoor exercise/leisure (advice provided by Ian Donaldson on 7 and 8 May and by Stephen Jones on 9 May);
- possibly increased fixed penalties for breaching the regulations (Clare Hicks put up advice on increasing the levels of FPNs on 8 May)
- (trailed in the media this morning) a change of message to "stay alert, control the virus, save lives"; and
- (also trailed) a threat-based "warning system" for England administered by a new "joint biosecurity centre" "with the aim of altering restrictions locally in England".

8. To our knowledge, the change of message and warning system have not been discussed with the Scottish Government.

9. The earlier measures in the list (items 1 to 4) have all been the subject of detailed advice to interested members of Cabinet over recent days. In those cases there is a reasonably open dialogue between the UK Government and the devolved administrations about policy and implementation, but much less so about timing of announcements or implementation. In some cases (e.g. TTT and the BEIS guidance) further work is in progress to ensure that UK Government initiatives integrate with devolved systems and plans (e.g. for Test, Trace, Isolate and Support) and public health restrictions.

## Wales and Northern Ireland

10. Amended regulations to implement the changes in Wales announced by Mr Drakeford on Friday will come into force on Tuesday. They will permit people to leave home for local exercise more than once a day, and allow garden centres to re-open, provided that they can ensure the two metre social distancing rule is followed. The regulations will also ease restrictions in order to allow councils to begin work on plans to re-open libraries and waste recycling centres, but actual reopening will not be for two to three weeks.

11. The Northern Ireland Executive is due to meet on Monday and might decide on an approach to a road map for easing lockdown then or on Thursday.

12. Both administrations are concerned about the interaction of UK Government decisions with their approaches, including the BEIS safe working guidance (which for trains for example has implications for the financial viability of the Welsh railway service), about potential mixed messages about staying at home, and particularly about the winding down of HMT funding for job retention.

## ASSESSMENT OF CHANGE OPTIONS FOR SCOTLAND

13. At your media briefing on Thursday, at the conclusion of the COVID-19 regulatory review cycle, you informed the public that the lockdown restrictions would continue with the only real scope for change in the immediate future being a marginal change concerning outdoor exercise. Following that, you have asked us, over the coming week, as we hopefully see more evidence of a downward trend in virus, to assess some potential further minor changes: e.g. further extension of permissible outdoor activities/leisure, garden centres, and some outdoor work.

14. The table in **Annex A** sets out our understanding of the proposed UKG changes to restrictions and enforcement powers and our initial assessments, which are only limited at this stage. Work is in progress to apply our assessment framework to these options. The results of that assessment will be shared with Cabinet as early as possible though some of the required modelling may not be finalised in time for Cabinet consideration on Tuesday. These new assessments will be presented alongside those for the options for change that have already been considered, in order that their relative benefits can be compared.

## PLANS FOR A FUTURE 'ROAD MAP'

15. You asked that we take forward work to enable the Scottish Government to set out as soon as possible suggested phasing/potential dates for future changes to restrictions (e.g. for schools, economy). While it will be important to understand the impact on Scotland of the UK Government's 'road map' for England, the content, sequencing and timing of the Scottish road map will be determined by the data that informs Scotland's specific needs and circumstances.

16. In order to provide this future 'road map' (title to be confirmed), we need to have a clear sense of the optimal changes to make: what, when and how.

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17. Consistent with our broad approach to transitioning and exiting from the crisis, we must determine what the right options are (what and when) to minimise overall harm and best support our national outcomes, always subject to the prime objective and necessity to suppress the virus and avoid NHS capacity being overwhelmed. We are currently identifying options from a range of sources, including:

- Expert Advice – e.g. SAGE, CMO AG, WHO and also economic and social expertise (e.g. International Education Advisers);
- What the other 4 Nations are considering or already doing;
- International experience - we are receiving reports from our international network and other sources;
- Public engagement (e.g. the new dialogue platform is providing rich ideas, correspondence); and
- Thinktanks – and other informed commentators.

18. These sources are providing a wealth of useful ideas for options. In addition to the frequent reports on expert advice and international experience that you are already receiving, we will also provide you this week with a report on the ideas that have been fed back to us through the public dialogue platform that the Government launched with the *Framework* update last Tuesday. These give a good sense of what the public considers should be early priorities (though not on a balanced sample of the population and not necessarily taking the impact on R into account).

19. In addition to the information sources above, it is important that we bring strategic consideration to the assessment of options, i.e. identifying from across the full spectrum of potential options which options would likely be high priorities given our understanding of their likely (low) R-impacts and potential large benefits. Options would need to be considered across the full range of harms, and we would need to consider optimal phasing and sequencing.

20. To enable this, you may wish to commission an options identification process to identify low-R impact/high benefit options from across portfolios in relation to each of the four harms. We can provide you and Cabinet Secretaries with advice early this week on how this would work and could be rapidly delivered. It should help to determine a strategic ordering and potential broad phasing of changes to the restrictions by later in the week (though attaching specific dates, even on an indicative basis would have advantages and disadvantages).

### COMMS/HANDLING

21. Communications officials will issue a news release following the First Minister's announcement via briefing (timing tbc) focusing on the Scottish announcement about easing on outdoors activity. This will emphasise the Scottish approach as opposed to the UK Government's English approach in advance of the Prime Minister's expected announcement. This will also include social media content.

22. We will need to write to the COVID and H&SC Committees at the same time.

23. An article emphasising the First Minister's approach to lockdown will issue to all Scottish daily newspapers for issue in Monday's newspapers following the Prime Minister's address. This will make clear the reasons and decision-making behind the difference in the Scottish approach. The First Minister will also undertake broadcast interviews to make this point. This messaging will be taken forward through all media interaction going forward. Jason Leitch has recorded related public information material.

**RECOMMENDATION**

24. That you please:
- i. Note the information concerning the UK/DA plans (para 7-12 and Annex A)
  - ii. Note the work underway to assess the other Four Nations' options
  - iii. Note that advice will come to you next week summarising the key insights from the public dialogue platform (a source of options for consideration)
  - iv. Note that we will provide you with advice early in the week on identifying strategic priorities for change options from across portfolios.
  - v. Note that comms/handling plan at para 21-23.

**Dominic Munro**  
**Director: Exit Strategy**

**10 May 2020**

**Copy List:**

David Rogers	Name Redacted
[Redacted]	Richard Foggo
[Redacted]	Graeme Logan
Shirley Rogers	Alison Cumming
Scott Wightman	Joe Griffin
Chief Medical Officer	Barbara Allison
Audrey MacDougall	Roger Halliday
James Hynd	Aileen Easton
Liz Lloyd	Donna Bell
Stuart Nicolson	Andrew Scott
Colin McAllister	Bridget Campbell
Brian Dornan	Miranda McIntosh
Rachel Sunderland	Clare Hicks
Name Redacted	Ian Donaldson

Proposal for relaxation of limitations on outdoor activity	Technical assessment	Viability	Broader considerations
<p>1. <b>Exercise outdoors as often as people wish</b>  <i>(Advice contained in Ian Donaldson’s submission of 7 May. To be implemented in Scotland and announced from 10 May)</i></p>	<p>Minimal impact on R if compliance with social distancing is high. SAGE and CMO Scotland AG advice is that outdoors transmission risks with physical distancing are very low.</p> <p>Positive effect on social and some health harms.</p> <p>Neutral impact on economic harm</p>	<p><b>Messaging:</b> Straightforward to implement and communicate.</p> <p><b>Enforcement:</b> No significant changes required for police or local government. The police approach of using harder enforcement only where necessary remains in place.</p> <p><b>Legal:</b> Implemented easily through change to guidance.</p> <p>[Redacted]</p>	

<p><b>2. Sit and relax outside (sunbathing etc)</b>  <i>(Advice contained in Ian Donaldson's submissions of 7 and 8 May. Not to be implemented in Scotland at this time)</i></p>	<p>Some impact on R if high compliance with social distancing and hygiene.                  SAGE and CMO Scotland AG advice is outdoors transmission risks with physical distancing are very low. However, evidence on transmission from hard surfaces is unclear.</p> <p>Could lead to greater crowding of public spaces and more outdoor congregation.</p> <p>Indirect issues – ice-cream vans etc with congregation and hard surfaces</p>	<p><b>Messaging:</b> Could have negative impact on compliance with 'Stay at Home' message.</p> <p>Opportunity to sit outdoors could undermine regulations on gatherings of more than 2 people.</p> <p><b>Enforcement:</b> This would make the policing approach more straightforward. Police use a hard enforcement approach only where necessary. People are currently relaxing outside while socially distancing and it is hard for police to use the 'engage, explain, educate' approach when public do not necessarily accept the message they should not be outdoors relaxing while socially distancing (Police use the phrase 'compliance realism').</p> <p><b>Legal:</b> Regulations would need amended to make clear that it would be a reasonable excuse to leave your home for this purpose. We would provide further clarity about the exact parameters of what is allowed during the drafting process.</p>	
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<p>3. <b>Drive a short distance</b> to exercise, sit or relax <i>(Under consideration by UKG)</i></p>	<p>SAGE and CMO Scotland AG advice is outdoors transmission risks with physical distancing are very low.</p> <p>We are not aware of any specific modelling or consideration of this proposed relaxation so impact is hard to assess.</p> <p>Would involve greater movement of people and thus of potentially infectious individuals and greater mixing between populations. Could lead to greater crowding of public spaces and more outdoor congregation and increased congregation at take away cafés, increased use of public toilet facilities etc.</p> <p>Likely to create potential bottlenecks at popular hotspots including country parks and beaches, making physical distancing more difficult to observe</p>	<p><b>Messaging:</b> Would require additional information re parameters, safety and caveats. Could be seen to contradict with ‘Stay at Home’ message and could have a negative impact on compliance.</p> <p><b>Enforcement:</b> Driving is not an offence under the regulations and police have not been using road blocks or routinely stopping drivers. In order to discourage driving distances to exercise LAs have in some cases shut car parks etc.</p> <p>There are already reasonable excuses under medical grounds etc where it would be accepted individuals need to drive a short distance in order exercise.</p> <p><b>Legal:</b> The Regulations do not restrict a person from driving for exercise (although travelling for long distances for exercise may not amount to a reasonable excuse for leaving your home).</p> <p>Would need clarity about what is a “short distance”.</p>	
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<p>4. <b>Engage in outdoor sport where distancing is possible</b>, e.g. golf, angling <i>(Under consideration by UKG)</i></p>	<p>Not aware of specific modelling or consideration.</p> <p>Involves greater movement of people and thus of potentially infectious individuals. Greater mixing between populations. But if travel is done in household groups and travel and activity has high compliance with social distancing and hygiene reasonable to assume low risk. Might naturally encourage social mixing.</p> <p>Could lead to greater crowding of public spaces and more outdoor congregation.</p> <p>Many outdoor sports have developed plans to restart activity where physical distancing can be observed. These are at an advanced stage but would need further clinical assessment and some time to implement at a local level.</p>	<p><b>Enforcement:</b> Policing impact likely to be low and this would be more for LAs etc to facilitate safely.</p> <p>Many leisure facilities, including golf courses, are run by LA's who would need to facilitate their safe opening.</p> <p>Consideration would be required for all sports that could demonstrate their ability to physically distance.</p> <p><b>Legal:</b> Would need further details of what outdoor sport can be undertaken where distancing is possible. We would need to consider whether each of these could constitute exercise – if not, then the Regulations would need to be amended to make clear that it is a reasonable excuse to leave your home for recreation.</p> <p>If we allow socially distanced sports between people of <i>different households</i> then we may also want to consider whether we want to make any changes to the legal restrictions on gatherings.</p>	
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<p>5. <b>Take part in other kinds of exercise where distancing is possible</b> (for example using sports courts, playgrounds [with fixed equipment and hard surfaces] or outdoor gyms)</p>	<p>We are not aware of specific modelling of the R impact. we would urge caution. Evidence suggests the virus lives on metal surfaces for longer than we realised (and different times on different metals).</p> <p>The CMO Advisory Group consider the risk of transmission outdoors to be low. Their advice about playgrounds is that they would need to be risk assessed and that disinfecting after each use would be difficult.</p> <p>Involves greater movement of people and thus of potentially infectious individuals. Greater mixing between populations. But if travel is done in household groups and travel and activity has high compliance with social distancing and hygiene reasonable to assume low risk. Might encourage congregation on public transport. Might naturally encourage social mixing. Evidence on transmission by surfaces not clear and potentially risky. Not aware of specific modelling or consideration. Distancing might be possible but not complied with.</p>	<p><b>Enforcement:</b> Is essentially for LAs – some play parks likely to be incredibly busy and they may need to introduce additional physical distancing approaches to support their opening, they will need time and engagement in the process to support this.</p> <p><b>Legal:</b> These facilities are currently required to close by the Regulations and would need amendment if they are to open.</p>	
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<p><b>6. Travel further to exercise, for example for hillwalking or outdoor swimming</b>  <i>(For possible future consideration by Scottish Ministers)</i></p>	<p>Involves greater movement of people and thus of potentially infectious individuals. Greater mixing between populations. Private travel might be low risk of itself but what about toilet facilities etc on arrival? Public travel needs protected – and inequalities issues to consider. Congregation of populations at cafés etc. Might encourage congregation on public transport. Might naturally encourage social mixing. Not aware of specific modelling or consideration.</p> <p>Outdoor swimming is probably ok.</p> <p>Hillwalking puts additional burden on rescue services.</p>	<p><b>Enforcement:</b> Minimal impact on policing approach. Would require engagement with LAs and potential careful management in more remote and rural areas where a significant strain could be placed.</p> <p><b>Impact on emergency services:</b> This could encourage people to travel to remote areas and increase the potential need for emergency services intervention if experiencing difficulty hillwalking or rambling in unfamiliar areas</p> <p><b>Transport:</b> Could lead to operational impacts on trunk road network at popular locations, Will require the reopening of car parks and potentially laybys as well. Will lead to an increase in road traffic. Could encourage people to travel on public transport.</p> <p><b>Legal:</b> The Regulations do not restrict travelling to exercise (although it is currently arguable that travelling a long distance may not amount to a reasonable excuse for leaving your home).</p>	
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		<p>Implementation would be a matter of clarifying the guidance on exercise and what amounts to a reasonable excuse.</p> <p>Swimming pools are closed by Regulations, so opening of outdoor pools would require amendment of regulations.</p>	
<p><b>7. Borders health measures</b> (Advice contained in Rachel Sunderland's submissions of 6,7 and 9 May)</p>		<p><b>Messaging:</b> The UKG have prepared a comms and engagement plan. The introduction of new health measures at the border requires a significant cross Government effort to make sure there are clear messages to the public, potential passengers and stakeholders so that they understand why these measures are being introduced now and what actions they need to take as a result.</p>	
<p><b>8. Regulatory changes on opening garden centres to open</b></p> <p>In England many recycling centres are already open with UKG encouragement. We understand that the regulatory change UKG is considering is to put the</p>	<p>Consideration of this option was included in Dominic Munro's Options Assessment submission of 7 May. The specific option that was considered included similar distancing measures as supermarkets, and the introduction of additional measures such as facemasks.</p>	<p><b>Messaging:</b> Would require additional information re parameters, safety and caveats.</p> <p><b>Legal:</b> potentially update additional list of businesses in the regulations.</p>	<p>There is continued consensus among many members of the public on the dialogue platform that if a business can operate in a 'safe' way then they should be allowed. Key industries mentioned frequently continue to include:</p>

<p>legal basis for their opening beyond doubt.</p>	<p>This impact of this individual change is not considered likely to push R over one, but the impact on R could be greater than the changes to guidance on outdoor exercise duration and frequency under consideration in Scotland. The option may merit close consideration in the near future.</p>		<p>retail (esp. <b>garden centres</b>, home improvement, hospitality, construction, pet care, hairdressers, beauticians).</p>
<p><b>9. Regulatory changes on opening recycling centres</b></p>	<p>To be modelled</p>	<p><b>Messaging:</b> Would require additional information re parameters, safety and caveats.</p> <p><b>Enforcement:</b> Driving is not an offence under the regulations and police have not been using road blocks or routinely stopping drivers.</p> <p><b>Legal:</b> need to check reasonable excuse for leaving your house – excuses: avoid illness, injury and escape risk of harm</p>	<p>Waste management and recycling are amongst the main preoccupations of those members of the public engaging through our Dialogue Platform. The joint top rated “idea” posted on the site is: “Consider reopening household waste/recycling centres”. Many report an increase in fly-tipping across the country and raise concerns around vermin and associated health risks. Many respondents feel <i>waste management is an essential service</i></p>

<p><b>10. BEIS safe working guidance</b></p>	<p>Many workplaces have closed as a result of regulations, while others have followed public health guidance and closed workplaces. Before deciding to change restrictions in a phased and controlled way, we must consider how the seven principles set out in the <i>Framework</i> would apply to different sectors, workplaces or types of work and what the wider implications of changing the restrictions would be for health, the economy and wider society – for example, considering the consequences for transport, for supply chains and for more general compliance. Such changes need to be viewed from a whole-system perspective.</p>	<p><b>Messaging:</b> Would require additional information re parameters, safety and caveats.</p> <p><b>Enforcement:</b> We are considering the feasibility of restarting certain business sectors and/or types of workplaces. This would have to be on the basis of guidance, agreed with employers and trades unions, that supports safe working and is consistent with our Fair Work approach.</p> <p><b>Legal:</b> Currently exploring.</p> <p>Timing of publication not clear, but wording is being agreed pointing to the need for the guidance to be considered alongside local public health and safety requirements and legislation in Northern Ireland, Scotland and Wales</p>	<p>Decisions on restarting business, and other possible variations to the existing restrictions, would have wider consequences for other services and sectors, for example in the demand for public transport and the consequences for school attendance.</p> <p><i>To note: In discussions with UKG we have said that we support a four nation approach, but we can't endorse the guidance without having had time to have those discussions and while there seem to be strong reservations from trade unions. UKG have not said how they plan to address this.</i></p>
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<p><b>11. Education/early years</b></p> <p>It is not clear yet what the Prime Minister might announce. We know consideration was being given to options including from 1<sup>st</sup> June nurseries and other early year providers to begin to welcome back all children. Primary schools to welcome back children in Reception, Year 1 and Year 6, alongside the priority groups.</p>	<p>Three combinations of opening nursery, primary and secondary schools were assessed in Dominic Munro's Options Assessment of 7 May. Each was assessed to take the R number close to or over 1.</p> <p>This specific new option has not yet been modelled, that work is now in hand.</p>	<p><b>Messaging:</b> Would require very clear messaging for education staff, parents and children and young people re parameters, safety and caveats. Also clear articulation of onsite and remote learning. The strong message that reopening of schools will send to wider society about the lockdown must be clearly factored in.</p> <p><b>Enforcement:</b> Any decision we take around re-opening our schools will be guided by the science, and will include engagement with our local government partners.</p> <p><b>Legal:</b> School and nursery closures are not provided for in regs.</p>	<p>The Covid-19 Education Recovery Group has been convened to provide advice to Ministers and local gov't leaders on education policy and delivery in the context of the pandemic. We expect a phased reopening of schools, and the group is currently considering the best way to take this forward. It is urgently examining a range of issues, incl. ensuring we are as well prepared as possible to continue children and young people's education at school when it is safe to do so.</p>
<p><b>12. Return to training for elite athletes</b> <i>(Under consideration by UKG. Not included as part of above sequence as does not relate to outdoor activity for the public)</i></p>	<p>The Chief Medical Officers for sport in Scotland have developed a plan detailing the approach that could be taken for the phased return of elite athlete training in Scotland that could quickly be reviewed by SG and activated if required.</p>	<p>For some sports (cycling, golf, tennis (singles), athletics,) social distancing is achievable and present modest additional risk if social distancing measures enacted and athletes are training from their home base.</p>	



	<p>More robust risk assessment and control measures would be needed for training in groups, and for gym based activity. These assessment and controls would be performed by organisations such as National Governing Bodies, SportScotland and operators of sporting venues.</p>		
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**Fixed Penalty Notices for breaches of the lockdown regulations**

We aware that the Home Office has been considering increasing FPN amounts from £60 to £100, doubling per offence, with the maximum penalty being set at £3200 for repeat offenders. We do not have confirmation that this is definitely being taken forward at this point.

Safer Communities colleagues have consulted both Police Scotland and COPFS regarding this change. COPFS is not aware of any context which would suggest an increased amount of FPN is required in Scotland. The total levels of FPNs being passed down in Scotland appear to be proportionately lower than in England. The Police Scotland approach is that enforcement is the last option in relation to individuals and COPFS has been supportive of that approach. From the Police Scotland perspective the public have been compliant. Only in a minority of occasions has it been necessary to move to enforcement.

Operationally it does not appear to be essential to maintain consistency on the level of FPNs across the UK. [Redacted]

The reason for the inclusion of that limit was due to the fact that the maximum penalty we can now offer as a fiscal fine is £500 (since the 2020 Act came in to force) and it seemed at odds for the Police to be able to impose an on the spot fine in excess of that available to the Prosecutor. The changes proposed by the Home Office would obviously go far beyond that.

On balance at this stage there does not appear to be a justification for increasing the amounts for FPNs in Scotland. We understand that the [Redacted] and the Cabinet Secretary for Justice concur with that view.