

Annex B: Information

[redacted]

EMAIL CHAIN 1.1 24 March 2020 15:30 (Replicating E&W Regulations on offences and penalties)

From: [redacted]

Sent: 24 March 2020 15:30

To: McAllan M (Mary) [redacted]@gov.scot; Brown J (Joe) [redacted]@gov.scot; Garland S (Stephen) [redacted]@gov.scot; Economy Covid-19 Hub <BESTCovidHub@gov.scot>;

COVID-19 Scottish Exchequer and Financial Management <COVID-19ScottishExchequerandFinancialManagement@gov.scot>; Bird L (Lisa)

[redacted]@gov.scot; CLG Coordination Unit <CLGCoord@gov.scot>; [redacted]@gov.scot;

[redacted]@gov.scot; Gallagher S (Stephen) [redacted]@gov.scot; Irvine A (Alison)

[redacted]@gov.scot; [redacted]@gov.scot; TS Covid-19 Mailbox <[TSCovid-](mailto:TSCovid-19Mailbox@transport.gov.scot)

[19Mailbox@transport.gov.scot](mailto:TSCovid-19Mailbox@transport.gov.scot)>; Griffin J (Joe) [redacted]@gov.scot; Hicks C (Clare)

[redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; SCJD COVID-19

Coordination Hub <SCJDCOVID19@gov.scot>; SG CoronaVirus

<SGCoronavirus@gov.scot>; Covid-19 Health Workforce

<covid19healthworkforce@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; Cowan

WJ (Willie) [redacted]@gov.scot; Rennick NS (Neil) [redacted]@gov.scot

Cc: Rogers D (David) (Constitution and Cabinet Director) [redacted]@gov.scot;

[redacted]@gov.scot; Birt C (Christopher) [redacted]@gov.scot; [redacted]@gov.scot;

Rogers S (Shirley) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot;

[redacted]@gov.scot; [redacted]@gov.scot;

Subject: Immediate: Covid Emergency Regs - Commission of review of UK SI

Importance: High

Colleagues

[out of scope]

2. Criminal Law Branch - consider in particular Regulations 7 and 8 on creation of offences and fixed penalties, grateful for your views on how we can replicate as closely as possible in a relevant way for the Scottish context.

3. Police Division - Clare if you could review and consult with PS to ensure that replicating closely this approach for Scotland is operable practically, and for any concerns which you/they have about the approach.

[out of scope]

[redacted]

Mob: [redacted]

Directorate for Constitution and Cabinet | Scottish Government

[redacted]

[out of scope]

EMAIL CHAIN 1.2 25 March 2020 19:01 (Acknowledgement)

From: [redacted]@gov.scot;

Sent: 25 March 2020 19:01

To: [redacted]@gov.scot; McAllan M (Mary) [redacted]@gov.scot ; Brown J (Joe) [redacted]@gov.scot; [redacted]@gov.scot; Economy Covid-19 Hub <BESTCovidHub@gov.scot>; COVID-19 Scottish Exchequer and Financial Management <COVID-19ScottishExchequerandFinancialManagement@gov.scot>; Bird L (Lisa) [redacted]@gov.scot; CLG Coordination Unit <CLGCoord@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; Gallagher S (Stephen) [redacted]@gov.scot; Irvine A (Alison) [redacted]@gov.scot [redacted]@gov.scot; TS Covid-19 Mailbox <TSCovid-19Mailbox@transport.gov.scot>; Griffin J (Joe) [redacted]@gov.scot ; Hicks C (Clare) [redacted]@gov.scot; [redacted]@gov.scot; SCJD COVID-19 Coordination Hub <SCJDCOVID19@gov.scot>; SG CoronaVirus <SGCoronavirus@gov.scot>; Covid-19 Health Workforce <covid19healthworkforce@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; Cowan WJ (Willie) [redacted]@gov.scot; Rennick NS (Neil) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; CLG Coordination Unit <CLGCoord@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Neill S (Sean) [redacted]@gov.scot; [redacted]@gov.scot; Covid-19 Health Workforce <covid19healthworkforce@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Neill S (Sean) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Davidson N (Niall) [redacted]@gov.scot;

Cc: Rogers D (David) (Constitution and Cabinet Director) [redacted]@gov.scot; Birt C (Christopher) [redacted]@gov.scot; [redacted]@gov.scot; Rogers S (Shirley) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot

Subject: RE: Immediate - 7.30pm tonight: Emergency Regs - Review draft Scottish SSI

[redacted], Chris

Thanks for sight of revised regs and the opportunity to comment - appreciate that provisions on FPNs are being addressed separately, so I'll restrict comments to other regulations, most of which have been shared earlier but possibly too late to make this cut.

[out of scope]

[redacted]

Head of EU Exit, Police Complaints and Scrutiny | Police Division | Directorate for Safer

Communities | Scottish Government

1R St Andrew's House

0131 244 [redacted]

[out of scope]

EMAIL CHAIN 1.3 26 March 2020 06:58 (Regulations not shared with Police Scotland)

From: [redacted]@gov.scot;

Sent: 26 March 2020 06:58

To: [redacted]@gov.scot; Birt C (Christopher) [redacted]@gov.scot

Cc: Hicks C (Clare) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot;

[redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot;

[redacted]@gov.scot; French C (Craig) [redacted]@gov.scot; [redacted]@gov.scot;

[redacted]@gov.scot; [redacted]@gov.scot; Police Division Hub Mailbox

<police_division_hub_mailbox@gov.scot>; [redacted]@gov.scot;

Subject: RE: Immediate - 9.30am today: Emergency Regs - Review draft Scottish SSI

Thanks [redacted], Chris, I'm sharing the key points of the approach on FPN with PS, COPFS and SCTS now but not the regs themselves, emphasising that this is the final position – will come back if there are any showstoppers.

[redacted]

Head of EU Exit, Police Complaints and Scrutiny | Police Division | Directorate for Safer Communities | Scottish Government

1R St Andrew's House

0131 244 [redacted]

[out of scope]

EMAIL CHAIN 1.4 26 Mar 2020 08:10 (Scottish Court and Tribunal Service concerns over FPN administration)

From: "Hicks C (Clare)" [redacted]@gov.scot

Sent: 26 Mar 2020 08:10

To: "Birt C (Christopher)" [redacted]@gov.scot "[redacted]@gov.scot; [redacted]@gov.scot;

Cc: [redacted]@gov.scot; [redacted]@gov.scot;"[redacted]@gov.scot; [redacted]@gov.scot;

[redacted]@gov.scot; [redacted]@gov.scot;"French C (Craig)" [redacted]@gov.scot;

"[redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Police Division Hub

Mailbox <police_division_hub_mailbox@gov.scot>; "[redacted]@gov.scot;

[redacted]@gov.scot; [redacted]@gov.scot;"Hannaway K (Kenneth)" [redacted]@gov.scot

Subject: RE: Immediate - 9.30am today: Emergency Regs - Review draft Scottish SSI

Chris/[redacted]

To save time below are posted comments from SCTS re operability of the fine structures set – we may need to tell them to live with manual workarounds, but you should be aware. We'll follow up with PS and COPFS and come back

It may be helpful if I outline the potential consequences of moving from a £40 offer to a 50% statutory uplift for non-payment £60 to help focus discussions

- Police Scotland are likely to require new tickets to reflect the early discount process
- Our current data model flows could not be utilised
- Customers would not be able to use our 24/7 payment channels (at a time when courts will be closed)
- Customers will only be able to pay by post (placing pressure on mail etc. and requiring contingency plans to allow for postal delays etc. – lack of clarity when discounts for early payment could be applied)
- SCTS will need to introduce a manual process to notify Police Scotland of failed tickets
- Police Scotland will need to introduce a new process to send Fines Registration Certificates to SCTS
- We will not be able to data mine to provide timely MI to SG on the value of tickets issued and paid etc.

In essence this in my view is not operable and may lead to the need for prosecutions. Police and Crown colleagues may be able to provide a view.

I still await confirmation on why E&W are setting values at £30. A presentational issue that legislators may want to reflect on is that £30 will be lower than the deterrent for drinking a glass of wine in a public park on a Sunday afternoon.

[out of scope]

[redacted]

[out of scope]

EMAIL CHAIN 1.5 26 March 2020 08:15 (Discussion over administrative options)

From: Birt C (Christopher) [redacted]@gov.scot

Sent: 26 March 2020 08:15

To: Hicks C (Clare) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot;
Cc: [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot;
[redacted]@gov.scot; [redacted]@gov.scot; French C (Craig) [redacted]@gov.scot
[redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Police Division Hub
Mailbox <police_division_hub_mailbox@gov.scot>; [redacted]@gov.scot;
[redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Hannaway K (Kenneth)
[redacted]@gov.scot
Subject: RE: Immediate - 9.30am today: Emergency Regs - Review draft Scottish SSI

Clare

What would the fines be if we stuck with the Scottish system that would have the administrative benefits they mention.

We can out this to Ministers. I suspect they will want to follow England though. I assume they would have the same logistical problems if we had just cooked up a new scheme?

C

EMAIL CHAIN 2.1 24 March 2020 18:43 (Police Scotland view on proposed FPNs)

From: [redacted]@gov.scot;

Sent: 24 March 2020 18:43

To: [redacted]@gov.scot; McAllan M (Mary) [redacted]@gov.scot; Brown J (Joe) [redacted]@gov.scot; Garland S (Stephen) [redacted]@gov.scot; Economy Covid-19 Hub <BESTCovidHub@gov.scot>; COVID-19 Scottish Exchequer and Financial Management <COVID-19ScottishExchequerandFinancialManagement@gov.scot>; Bird L (Lisa) [redacted]@gov.scot ; CLG Coordination Unit <CLGCoord@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; Gallagher S (Stephen) [redacted]@gov.scot; Irvine A (Alison) [redacted]@gov.scot; [redacted]@gov.scot; TS Covid-19 Mailbox <TSCovid-19Mailbox@transport.gov.scot>; Griffin J (Joe) [redacted]@gov.scot; Hicks C (Clare) [redacted]@gov.scot; [redacted]@gov.scot; SCJD COVID-19 Coordination Hub <SCJDCOVID19@gov.scot>; SG CoronaVirus <SGCoronavirus@gov.scot>; Covid-19 Health Workforce <covid19healthworkforce@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; Cowan WJ (Willie) [redacted]@gov.scot; Rennick NS (Neil) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; CLG Coordination Unit <CLGCoord@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Police Division Hub Mailbox <police_division_hub_mailbox@gov.scot>; [redacted]@gov.scot;

Cc: Rogers D (David) (Constitution and Cabinet Director) [redacted]@gov.scot; Birt C (Christopher) [redacted]@gov.scot; [redacted]@gov.scot; Rogers S (Shirley) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot;

Subject: RE: Immediate: Covid Emergency Regs - Commission of review of UK SI

[redacted]

We have received comments from Police Scotland (PS) on the revised draft Regs as follows:

Health Protection (Coronavirus, Restrictions) England Regulations 2020

[out of scope]

Offences and penalties

PS has no issues with the offence or penalty's being proposed and these would be appropriate and relevant to Scotland

Fixed penalty notices

In Scotland PS would welcome the ability to issue a Fixed Penalty Notice. The regulations as drafted for England and Wales would apply to notices administered by Local authorities and not SCTS as is currently the case in Scotland where officers issue FPN's. The current FPN's issued by the police in Scotland are subject to Lord Advocates Guidelines and PS will need to quickly work with COPFS to ensure that the current system of FPN's could be used for the proposed offences. PS asks that the current system of issuing FPN's and the applicable Lord Advocates Guidelines associated with them are replicated for these offences. **PS would not seek a power of arrest in these circumstances as officers could revert to a section 1 power of arrest under the Criminal Justice (Scotland) Act 2016 in circumstances where an individual refused to desist.**

PS has highlighted that the current FPN for ASB is **£40** in Scotland. Guidance would be required as to whether this would be the level of fine for this offence. In addition it should be noted that the majority of FPNs in Scotland are now issued via mobile device and this technology as well as the central ticket office technology would need to be amended to allow the efficient processing of any issued FPN. **The timescales for achieving this are currently unknown. It is anticipated however that in the initial days the policing stance would be to warn and inform.**

In addition to the above considerations around police powers, it would be useful to continue to consider whether other agencies such as local authorities may be given enforcement powers under these regulations as stated. Potentially a dual process may be required, to ensure swift introduction between different agencies.

We will share this feedback with COPFS who have also raised a query regarding offences, which we will check separately.

Let me know if you require anything further.

[redacted]

Head of EU Exit, Police Complaints and Scrutiny | Police Division | Directorate for Safer
Communities | Scottish Government
1R St Andrew's House
0131 244 [redacted]

[out of scope]

EMAIL CHAIN 2.2 24 March 2020 19:30 (Supportive of a gradual approach. Looking for continuity with E&W in fine values)

From: [redacted]@gov.scot;

Sent: 24 March 2020 19:30

To: [redacted]@gov.scot; McAllan M (Mary) [redacted]@gov.scot; Brown J (Joe) [redacted]@gov.scot; Garland S (Stephen) [redacted]@gov.scot; Economy Covid-19 Hub <BESTCovidHub@gov.scot>; COVID-19 Scottish Exchequer and Financial Management <COVID-19ScottishExchequerandFinancialManagement@gov.scot>; Bird L (Lisa) <Lisa.Bird@gov.scot>; CLG Coordination Unit <CLGCoord@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; Gallagher S (Stephen) [redacted]@gov.scot >; Irvine A (Alison) [redacted]@gov.scot; [redacted]@gov.scot; TS Covid-19 Mailbox <TSCovid-19Mailbox@transport.gov.scot>; Griffin J (Joe) [redacted]@gov.scot; Hicks C (Clare) [redacted]@gov.scot; [redacted]@gov.scot; COVID-19 Coordination Hub <SCJDCOVID19@gov.scot>; SG CoronaVirus <SGCoronavirus@gov.scot>; Covid-19 Health Workforce <covid19healthworkforce@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; Cowan WJ (Willie) [redacted]@gov.scot; Rennick NS (Neil) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; CLG Coordination Unit <CLGCoord@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Police Division Hub Mailbox <police_division_hub_mailbox@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot;

Cc: Rogers D (David) (Constitution and Cabinet Director) [redacted]@gov.scot; Birt C (Christopher) [redacted]@gov.scot [redacted]@gov.scot; Rogers S (Shirley) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot;

Subject: RE: Immediate: Covid Emergency Regs - Commission of review of UK SI

[out of scope]

We would also support a graduated operational approach to the issuing of FPNs, not only in recognition of the technological challenges but also in the interests of dealing with these breaches proportionately in the first instance. Ideally, we would wish to see continuity with E&W in terms of the level of fine and for that reason would prefer to see FPNs set at £30 but will raise the practicality of this with SCTS tonight.

[redacted]

Head of EU Exit, Police Complaints and Scrutiny | Police Division | Directorate for Safer
Communities | Scottish Government

1R St Andrew's House

0131 244 [redacted]

[out of scope]

EMAIL CHAIN 2.3 24 March 2020 20:04 (Suggests similar administrative problems in England)

From: Birt C (Christopher) [redacted]@gov.scot

Sent: 24 March 2020 20:04

To: [redacted]@gov.scot; [redacted]@gov.scot; McAllan M (Mary) [redacted]@gov.scot; Brown J (Joe) [redacted]@gov.scot; Garland S (Stephen) [redacted]@gov.scot; Economy Covid-19 Hub <BESTCovidHub@gov.scot>; COVID-19 Scottish Exchequer and Financial Management <COVID-19ScottishExchequerandFinancialManagement@gov.scot>; Bird L (Lisa) [redacted]@gov.scot; CLG Coordination Unit <CLGCoord@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; Gallagher S (Stephen) [redacted]@gov.scot; Irvine A (Alison) [redacted]@gov.scot; [redacted]@gov.scot; Covid-19 Mailbox <TSCovid-19Mailbox@transport.gov.scot>; Griffin J (Joe) [redacted]@gov.scot; Hicks C (Clare) [redacted]@gov.scot; [redacted]@gov.scot; SCJD COVID-19 Coordination Hub <SCJDCOVID19@gov.scot>; SG CoronaVirus <SGCoronavirus@gov.scot>; Covid-19 Health Workforce <covid19healthworkforce@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; Cowan WJ (Willie) [redacted]@gov.scot; Rennick NS (Neil) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; CLG Coordination Unit <CLGCoord@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Police Division Hub Mailbox <police_division_hub_mailbox@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot;

Cc: Rogers D (David) (Constitution and Cabinet Director) [redacted]@gov.scot; [redacted]@gov.scot; Rogers S (Shirley) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot;

Subject: RE: Immediate: Covid Emergency Regs - Commission of review of UK SI

[redacted], colleagues,

I've just spoken with our Home Office contact about this point in particular.

[out of scope]

It also sounds like they have a similar practical issue around the level of the fine but they are also keen that we mirror the level of fine that they are suggesting.

[out of scope]

C

EMAIL CHAIN 2.4 25 March 2020 18:11 (Agreed with Police Scotland to use existing ASB-FPN framework)

From: [redacted]@gov.scot

Sent: 25 March 2020 18:11

To: First Minister <firstminister@gov.scot>; Cabinet Secretary for Justice <CabSecJustice@gov.scot>; Cabinet Secretary for Health and Sport <CabSecHS@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>

Cc: Lord Advocate <LordAdvocate@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; DG Constitution and External Affairs <dgcea@gov.scot>; DG Economy <DGEconomy@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Thomson KAL (Ken) (Director-General) [redacted]@gov.scot; Ditchburn L (Liz) [redacted]@gov.scot ; Johnston P (Paul) [redacted]@gov.scot; Rogers D (David) (Constitution and Cabinet Director) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot >; [redacted]@gov.scot; Rogers S (Shirley) [redacted]@gov.scot ; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Birt C (Christopher) [redacted]@gov.scot; [redacted]@gov.scot; M (Mary) [redacted]@gov.scot; Economy Covid-19 Hub <BESTCovidHub@gov.scot>; Bird L (Lisa) [redacted]@gov.scot; CLG Coordination Unit <CLGCoord@gov.scot>; Griffin J (Joe) [redacted]@gov.scot >; Hicks C (Clare) [redacted]@gov.scot; SCJD COVID-19 Coordination Hub <SCJDCOVID19@gov.scot>; Covid-19 Health Workforce <covid19healthworkforce@gov.scot>; [redacted]@gov.scot; Rennick NS (Neil) [redacted]@gov.scot; Police Division Hub Mailbox <police_division_hub_mailbox@gov.scot>; Crawford E (Ewan) [redacted]@gov.scot; Lloyd E (Elizabeth) [redacted]@gov.scot; McAllister C (Colin) [redacted]@gov.scot; Communications Covid-19 <CommunicationsCovid-19@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; First Minister Covid Briefing Unit <FMcovidbriefingunit@gov.scot>

Subject: Immediate: for clearance Emergency regulations - Covid 19 restrictions

[out of scope]

We are presently doing a final review of the draft regulations from a policy perspective, the most significant of which relates to the fixed penalty notices.

Following discussions with Police Scotland, COPFS and the SCTS we have agreed it would be preferable to use the FPN scheme under the Antisocial Behaviour Legislation in Scotland – this would use existing administrative procedures to allow Police Scotland to use such notices immediately (and be simpler than creating a new scheme). This means that the regulations will, in this regard, look different to the English ones but our intent is the same i.e. allowing a FPN of £30 for non-compliance with the regulations raising to £60 if not paid within 14 days.

[out of scope]

[out of scope]

EMAIL CHAIN 2.5 26 March 2020 13:50 (Ministerial Briefing for final decision on age and fine value)

From: [redacted]@gov.scot;

Sent: 26 March 2020 13:50

To: Birt C (Christopher) [redacted]@gov.scot; Cabinet Secretary for Justice <CabSecJustice@gov.scot>; First Minister <firstminister@gov.scot>; Cabinet Secretary for Health and Sport <CabSecHS@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>

Cc: Lord Advocate <LordAdvocate@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; DG Constitution and External Affairs <dgcea@gov.scot>; DG Economy <DGEconomy@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Thomson KAL (Ken) (Director-General) [redacted]@gov.scot; Ditchburn L (Liz) [redacted]@gov.scot; Johnston P (Paul) [redacted]@gov.scot; Rogers D (David) (Constitution and Cabinet Director) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; Rogers S (Shirley) [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; [redacted]@gov.scot; McAllan M (Mary) [redacted]@gov.scot; Economy Covid-19 Hub <BESTCovidHub@gov.scot>; Bird L (Lisa) [redacted]@gov.scot; CLG Coordination Unit <CLGCoord@gov.scot>; Griffin J (Joe) [redacted]@gov.scot; Hicks C (Clare) [redacted]@gov.scot; SCJD COVID-19 Coordination Hub <SCJDCOVID19@gov.scot>; Covid-19 Health Workforce <covid19healthworkforce@gov.scot>; [redacted]@gov.scot; Rennick NS (Neil) [redacted]@gov.scot; Police Division Hub Mailbox <police_division_hub_mailbox@gov.scot>; Crawford E (Ewan) [redacted]@gov.scot; Lloyd E (Elizabeth) [redacted]@gov.scot; McAllister C (Colin) [redacted]@gov.scot; Communications Covid-19 <CommunicationsCovid-19@gov.scot>; [redacted]@gov.scot; [redacted]@gov.scot; First Minister Covid Briefing Unit <FMcovidbriefingunit@gov.scot>; Minister for Trade, Investment and Innovation <MinisterTII@gov.scot>

Subject: RE: Immediate: for clearance Emergency regulations - Covid 19 restrictions

[out of scope]

For clarity we need a decision from Cab Sec Justice on -

- a) The level of fine to be set by Fixed Penalty Notices (para 10).
- b) The age from which someone could be issued with a fine (para 14).

[out of scope]

[redacted] | **Scottish Government** | **Mob:** [redacted]

Attachment:

[out of scope]

2. It invites the First Minister and Cabinet Secretaries to decide the approach to four issues:
 - a) The level of fine to be set by Fixed Penalty Notices (para 10).
 - b) The age from which someone could be issued with a fine (para 14).

[out of scope]

Supplementary Advice on Fixed Penalty Notices – *requires a Ministerial Decision*

Fixed Penalty Notices

4. As mentioned in yesterday's submission, we have been working with SG, Police Scotland and COPFS colleagues to consider the fixed penalty notice scheme envisaged to support these powers.

5. We have chosen to apply the scheme under the Antisocial Behaviour legislation so that the relevant authorities are familiar with the process. One issue that has arisen, however, is that if the level of fine is not the same as those levied under the ASB scheme this will create an administrative issue for Police Scotland and the Courts Service. Meaning that they will have to provide a variety of manual workarounds to allow payment (eg being unable to use the current 24/7 online payment system) – potentially leading to an increased necessity for prosecutions due to non-payment. From a policy perspective, as well, a £30 fine would be less than, for example, a fine for being drunk and incapable which would be £40.

6. It is unlikely to be in the public interest for COPFS to take proceedings against someone who has run into administrative trouble in paying the fine so it may be that the imperative to have the same level of fine as England would override that risk.

7. In terms of how we would communicate this. If we mirror the English fine level we would simply be saying that the fine level is at the same level as England and we will work with Police Scotland to ensure administration of the fines. If we mirror the ASB provisions we could recognise that we have a different system in Scotland and that these fine levels simply reflect that. We could also say that it will make it easier to pay that way (you would be able to pay 24/7, whereas the manual workaround would require postal payment) and underline that we expect people to comply.

8. The latter approach may, however, raise questions as to why we thought it was necessary and proportionate to have a higher fine than the English level. We would have to argue that it made it easier for people to pay (and hence reduced the possibility of avoidable prosecutions) and that we thought this reflected the seriousness that we attached to these rules.

9. Given the technical and administrative delays that are likely to follow if the English approach to fixed penalty notices is adopted, it may prove challenging for the relevant agencies to ensure that information is recorded on the IT systems to enable the ticket to be paid by the offender within the 14 days before the fine is increased. The current system in Scotland allows for 28 days before the fine is increased and the risk in adhering to a 14 day deadline is that individuals could be unfairly penalised due to logistical delays. If option (a) is adopted, Police Scotland would be supportive of extending the deadline to 28 days to allow systems to be updated and the fine to be paid before it is increased, a proposal we would strongly recommend to avoid disproportionate penalties caused by administrative processes.

10. We would be grateful for Ministers views on this, would you:

- a) Prefer to mirror the fixed penalty levels in England i.e. £30 if paid within 14 days, or £60 thereafter (with increasing rates if penalties have already been issued to the same person subject to a £960 cap) – which will require manual workarounds on the part of Police Scotland and the Courts Service; or**
- b) Mirror the levels of fixed penalties in the antisocial behaviour legislation i.e. £40 if paid within 28 days or £60 outwith. This would be administratively more straightforward but would diverge from the UK situation.**

11. A further difference has been noted in the English regulations in that FPNs can only be issued to 18 year olds and above. The current approach in Scotland under antisocial behaviour legislation allows FPNs to be issued to 16 year olds and above.

12. In respect of the fine levels, the English approach ratchets up the fine for non-compliance, in the event that penalty notices are being issued to the same person or business on multiple occasions the level of the fine would double at each instance subject to a ceiling of £960. The UK Government are keen that we follow their approach.

13. If Ministers wished to mirror the approach in England and Wales in terms of issuing penalties to those over the age of 18 Police Scotland have noted that there is a potential gap for a group who may be more likely gather in groups etc. From a policy perspective we see merit in sticking as closely as possible to the current operation of antisocial behaviour legislation both from addressing potential risk to the policy intention of these powers but also to limit the additional burden to operational partners including the PS, COPFS and the Courts. Ministers are asked to confirm whether they comfortable with this approach.

14. Ministers are invited to agree to issuing of penalties from the age of 16.

[out of scope]

Recommendation

32. That subject to your decisions as above, in respect of paragraphs 10 & 14, 22, and 29, that you agree to the making of the Scottish Statutory Instrument as attached and note the other issues highlighted.

Chris Birt

Deputy Director, Organisational Readiness (Covid-19 non-health response)

[out of scope]

[redacted]