

Witness Name: Reg Kilpatrick
Statement No: **M2B-WG-CJD-02**
Exhibits: 27
Dated: 1 December 2023

UK COVID-19 PUBLIC INQUIRY
WITNESS STATEMENT OF REG KILPATRICK

1. This supplementary statement deals with matters relating to the enforcement of the coronavirus regulations in Wales. It is provided as an additional response to a request under Rule 9 of the Inquiry Rules 2006 dated 14 February 2023, referenced M2B-WG-CJD-01 and request reference M2B-WG-RK-01, dated 17 May 2023. The matters referred to in Question 14 and its subsections in M2B-WG-CJD-01 fall outside the remit of a single team or division in the Welsh Government therefore are better addressed in this supplementary statement. Questions 55-57 in M2B-WG-RK-01 have been dealt with here.
2. The statement in response to M2B-WG-CJD-01 provided by Des Clifford notes the limited involvement the Economy, Treasury, Constitution and Justice Directorate in decisions relating to sanctions and the enforcement of coronavirus regulations. The Coronavirus Recovery and Local Government Group includes within its areas of responsibility liaison with police forces in Wales who were primarily responsible for enforcement of the regulations, and Public Health Protection Directorate who undertake engagement with Environmental Health Officers, who were involved with enforcing other aspects of the regulations.
3. To provide this statement across several Welsh Government directorates, I have relied on advice and information from Hugh Brunt (Chief Environmental Public Health Officer), Name Redacted, James Gerard (Justice Policy) and Karin Philips (Deputy Director – Community Safety) in preparing this statement:

I, Reg Kilpatrick, will say as follows: -

Introduction and Background

4. By way of introduction, I will set out some general contextual information in relation to the Welsh police forces and Welsh local authorities, who were responsible for the majority of the enforcement activity relating to the coronavirus restrictions.

Context - policing

5. There are four police forces in Wales:
 - Gwent, which covers the local authority areas of Newport, Torfaen, Monmouthshire, Caerphilly, and Blaenau Gwent;
 - South Wales, which covers the local authority areas of Cardiff, Rhondda-Cynon-Taf, Merthyr Tydfil, Vale of Glamorgan, Bridgend, Neath-Port Talbot, and Swansea;
 - Dyfed Powys, which covers the local authority areas of Carmarthenshire, Pembrokeshire, Powys, and Ceredigion;
 - North Wales, which covers the local authority areas of Wrexham, Conwy, Flintshire, Denbighshire, Ynys Mon, and Gwynedd.
 - In addition, the British Transport Police covers railways in Wales, England, and Scotland.
6. In contrast to the position in Scotland and Northern Ireland, matters relating to policing and justice in Wales are largely reserved to the UK Government and UK Parliament. These reservations include:
 - the single legal jurisdiction of England and Wales (paragraph 8 of Schedule 7A to the Government of Wales Act 2006),
 - the prevention, detection and investigation of crime, the maintenance of public order, policing, and Police and crime commissioners (paragraphs 39-42 of Schedule 7A)
 - justice (paragraphs 164-181 of Schedule 7A)
7. Chief Constables are responsible ultimately for operational policing. Police and Crime Commissioners are elected by the public to hold Chief Constables and the forces to account. The responsibilities of Police and Crime Commissioners include appointing Chief Constables, setting the force budget, and determining the precept. The Home

Office sets national priorities for policing and Police and Crime Commissioners are required to provide a statement of how the force has contributed to improvements.

8. The Welsh Government and the four Welsh police forces maintain a very close working relationship, given the interrelationship between devolved and non-devolved public services, and the fact that many of the factors which can affect levels of offending and criminality are matters for which responsibility is devolved. Examples include housing, education, training and skills, social services, and the provision of services for people affected by substance misuse.
9. Formal engagement between the Welsh Government and policing in Wales takes place, at a strategic level, through the quarterly meeting of the Policing Partnership Board for Wales. Although a Policing forum, it is normally chaired by the Minister for Social Justice, with the First Minister chairing one meeting annually. I exhibit at **M2B-WG-CJD-02/01-INQ000321233** the terms of reference for the Board. A range of informal lines of communication and engagement also exist, including the Police Liaison Unit (PLU), a small unit funded by the Welsh forces but fully embedded within the Welsh Government to provide a strategic link between the police forces, the Police and Crime Commissioners and the Welsh Government.
10. Engagement also takes place through the Local Resilience Forums, which operate within the four Police Force areas. The Local Resilience Forums bring together all responder organisations that have a duty to co-operate under the Civil Contingencies (2004) Act, which includes police and local authorities.
11. I exhibit at **M2B-WG-CJD-02/02-INQ000353569** 'Policing in the pandemic: The police response to the coronavirus pandemic during 2020', a report by Her Majesty's Inspectorate of Policing and Fire and Rescue Services. This found that 'overall, the well-established relationships between Welsh forces and the Welsh Government were collaborative and effective.'

Context – local authorities

12. There are 22 principal local authorities in Wales, all of which are unitary authorities; they are not divided into county and district councils as are local authorities in much of England. Further background information about local government in Wales is

provided in my statement in response to the Rule 9 request reference M2B-WG-LGD-01.

13. The law in relation to local government is largely devolved to the Senedd, and Welsh Ministers have substantial autonomy to set the strategic direction for the structures of local government and the policy framework in which it operates. Local authorities are responsible for a range of functions which sit within the devolved competence of the Senedd.
14. Local authorities exercise several functions in relation to matters which are reserved to the UK Government, and this combination of devolved and reserved functions is significant in relation to the enforcement responsibilities of local authorities in Wales, both generally and during the pandemic. Local authorities enforce a range of regulatory matters, both devolved (such as environmental health and animal welfare) and reserved (such as trading standards, alcohol licensing, and occupational health and safety). Local authorities receive direction and guidance from the UK Government in relation to their reserved enforcement responsibilities, but the main day to day interaction is between local authorities and the Welsh Government.
15. Some of the local authorities' enforcement responsibilities are brought together under the umbrella of 'Public Protection', and senior local authority officers with enforcement responsibilities form the Directors of Public Protection Wales partnership. This forum meets quarterly in full (with frequency increased as required). The Directors of Public Protection Wales is supported by two underpinning groups; Environmental Health Wales and Trading Standards Wales, and there are also a series of Expert Panels and other groups which provide expert advice and guidance on specific matters such as communicable disease control, health and safety, and licensing. The Terms of Reference for these Groups are held by the secretariat to the Groups.
16. The Welsh Government also had strong working relationships with the Health and Safety Executive, which enabled proactive consultation on guidance the Welsh Government was producing where the Health and Safety Executive was the enforcement authority, such as schools and nursing homes. This was important to ensure consistency between devolved public health advice and reserved Health and Safety legislation. There were no formal structures for engagement with the Health and Safety Executive during the pandemic, but there were fortnightly informal

meetings between the Health and Safety Executive's Head of Field Operations, and the Welsh Government's Environmental Health Adviser.

Welsh Government engagement with police and local authorities

17. I understand that the inquiry has received detailed evidence across several statements about engagement between the Welsh Government, local authorities, and the police, including in my statements in response to M2B-LGD-01 and M2B-RK-01, and in the statement M2B/WG/JJS of the Minister for Climate Change (who was Minister for Housing and Local Government until May 2021). The emphasis was on adopting a joined-up approach between Welsh Government, the local authorities, and the Police to support adherence with restrictions in place.

18. I have exhibited in my previous statement M2B-WG-RK-01 (paragraphs 38-9) notes of meetings keeping police and local authority leaders briefed on the emerging pandemic. I was present at numerous meetings where enforcement was discussed with local authorities. These meetings were most likely to be the regular updates between Ministers and the local authority Leaders (including the PCCs) or those analogues which I chaired with local authority Chief Executives and Chief Constables. The key issues were the capacity and capability of the organisations to undertake their enforcement roles; updates on levels of activity; or highlighting particular problem areas. Financial support would also be raised from time to time. This information would provide detailed context to inform the 21-day reviews and therefore the need for adjustments to the enforcement measures.

Coronavirus regulations

Determining legal sanctions

19. Following the stay-at-home communication issued on 23 March 2020 by the Prime Minister, the First Minister gave the same messages to Wales on that day which was consistent with his view that wherever possible the UK should address the virus on a four nations basis. On 26 March 2020, the First Minister signed and approved The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, exhibited at

M2B-WG-CJD-02/03-INQ000352971, which came into force that day and imposed restrictions on individuals, businesses, and others.

20. Regulation 10 provided that a 'relevant person' could give a prohibition notice to a person if the relevant person reasonably believed that the person was contravening a requirement in regulation 4, 6 or 7 (which related to the closure of, or the placing of restrictions on, businesses and premises, places of worship, crematoriums and community centres), and that it was necessary and proportionate to give the prohibition notice. It also provided enforcement powers relating to regulation 8(1), which prohibited a person from leaving the place where they were living without reasonable excuse.
21. Regulation 8(11) provided that a 'relevant person' was a constable or a police community support officer, or a person designated by one of the following:
- The Welsh Ministers,
 - A local authority,
 - A national park authority, or
 - Natural Resources Wales.
22. Regulation 12 provided that any person who without reasonable excuse, contravened a requirement in regulation 4, 6, 7, 8(5) or 9(4), or contravened the requirement in regulation 8(1), committed an offence. It also set out the penalties which applied, whilst regulation 13 set out the circumstances in which a Fixed Penalty Notice (FPN) could be issued.
23. As outlined in my statement M2B-WG-RK-01 (paragraph 159) Ministers took the view that Fixed Penalty Notices enabled rapid responses to inappropriate behaviours in situations where immediate action was needed. I understand that Dylan Hughes' statement M2B-WG-DH-01 (paragraph 29) sets out the principles of issuing fixed penalty notices and how the penalties in Wales compared with those introduced in England.
24. I understand that the statement prepared by Jeremy Miles in M2B-WG-JM-01 (paragraphs 118-120) outlines the considerations in putting provisions in place as legal requirements rather than guidance, and in setting fixed penalties. This enabled enforcement authorities to take meaningful action if the regulations were breached, and it was anticipated that this would act as a deterrent. I will not repeat the

comments in his statement here except to say that whilst the Regulations came into force as they were laid in the Senedd, they were scrutinised and subject to a vote following a debate. I understand that Helen Lentle's statement M2B-WG-01/1-HAL further sets out the procedures for laying and scrutinising statutory instruments.

Proportionality and impact assessment

25. In my statement M2B-WG-RK-01, paragraphs 154-155, I noted that the "Regulations were for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence, spread of infection, or contamination. To use the powers, there must be a threat to public health and whatever restrictions were put in place had to be proportionate in terms of the impact they were aimed at achieving. Three-week reviews were a feature of the Regulations, and as soon as restrictions could no longer be considered proportionate, they would need to be removed or revised. The First Minister made this point to Cabinet each time the implementation of new measures, or amendment to existing measures, was discussed. I understand that Dylan Hughes' statement M2B-WG-DH-01 (paragraphs 35-37) provides further commentary on how the reviews were designed to ensure that the regulations remained a proportionate response.
26. I understand that the section on non-pharmaceutical interventions (paragraphs 212-217) contained in Andrew Goodall's statement in response to M2B-WG-01 describes in detail the Welsh Government's overall approach to decision making during the pandemic, including the way in which the proportionality of the restrictions and the impact of those restrictions on vulnerable groups was assessed.
27. That statement notes that when making decisions about non pharmaceutical interventions, Ministers were provided with information about the economic and societal implications of the options under consideration, which set out the impacts on particular socio-economic groups and groups with protected characteristics. Summaries of impact assessments were published, although the need to make decisions at pace for the protection of public health meant that it was not always possible to undertake full equality impact assessments in line with best practice for policy decisions of the measures being considered.
28. I understand that the section of Andrew Goodall's statement headed 'Equality impact assessment and groups with protected characteristics' (paragraphs 277 – 300)

provides more detail on the Welsh Government's approach to impact assessment and mitigation against the five harms. I also understand that the development of the approach to impact assessments is described in the statement of Tom Smithson in response to M2B-TS-01 (for example in paragraphs 23-28).

29. The proportionality of enforcement approaches must be considered in the context of the proportionality of the regulations themselves. My statement M2B-WG-RK-01 (paragraph 15) sets out how the Welsh Government shared early thinking on sanctions with police forces. I understand that the assessment of the proportionality of the regulations is described in detail in the statement of Tom Smithson in response to M2B-TS-01, which notes at paragraph 19 that information about the enforcement of and compliance with the regulations was included as part of the 21-day process.
30. As described above, the general approach to enforcement of the regulations by the police and local authorities was focused upon proportionality, through use of the '4Es' approach (engage, explain and encourage compliance before moving to enforcement). Whilst all four UK nations relied on Fixed Penalty Notices as a means of enforcing regulations, in Wales the large majority of interactions with enforcement officers did not result in action being taken. Police in Wales used sanctions as last resort, and local authority enforcement officers sought informal engagement and warnings before moving to issue Fixed Penalty Notices. An example of local authority enforcement is provided in my statement M2B-WG-RK-01 (paragraph 162).
31. The potential impact of restrictions on different groups was considered during the 21-day reviews of restrictions, and in considering whether to have a 'firebreak' lockdown in October-November 2020. For example, on 19 October 2020 Ministerial Advice MA/FM/3428/20 was presented for approval setting out a time limited package of national restrictions, which I exhibit as **M2B-WG-CJD-02/04-INQ000176863**. The Ministerial Advice noted (paragraph 59) that the current Fixed Penalty Notice regime would be retained, not least because increasing fines could disproportionately affect Black Asian Minority Ethnic or socio-economically disadvantaged people.

Enforcement of the coronavirus regulations

32. Enforcement of the 'stay at home' restrictions, was largely a matter for the police, with local authority Environmental Health Officers having a role where regulations applied to relevant premises.

33. Enforcement matters were discussed as part of the regular engagement which took place with local authorities, the Police and Crime Commissioners and the Chief Constables as part of the 21-day review process. I described this engagement process in detail in my statement in response to M2B-WG-LGD-01, including the engagement which took place in respect of the local restrictions introduced in September and October 2020. That statement includes, in the section headed '*Continued engagement with policing in Wales*', a description of how the Welsh Government's Community Safety Division worked with the Police Liaison Unit to ensure that Chief Constables and Police and Crime Commissioners in Wales were effectively engaged in Covid-19 decision making. I do not therefore describe these matters again in this statement.

Police enforcement

34. From the start of the pandemic there was engagement between the Welsh Government and policing in Wales. Police forces were identified as the primary initial enforcement authority within Covid-19 legislation. From the outset, police forces in Wales (and England) were committed to adopting a 4Es (Engage, Explain, Encourage, Enforce) approach to enforcement, and their stated policy was that Fixed Penalty Notices would only be issued as a last resort. Exhibit **M2B-WG-CJD-02/05-INQ000353565** provides an example of the College of a Policing and National Police Chiefs' Council briefing pack which outlined the approach to enforcement (slide 26).

35. Whilst police forces in Wales were not involved in the first iteration of the legislation, they were consulted in subsequent rounds. Once legislation was introduced, policing in Wales had a role in explaining and translating the rules in their interaction with the public, which was particularly challenging in the context of widespread media coverage based on English rules. Police forces reported that, when there were variations between Welsh and English rules, there were sometimes difficulties when people were travelling from England into Wales. This was particularly so in border areas and so-called tourist 'honeypot' areas, given the reliance on UK-wide media bulletins for information about rules. I cover border issues in more detail in my statement M2B-WG-RK-01 (paragraphs 78-82).

36. The Welsh police forces began to submit weekly update reports to the Welsh Government from the end of April 2020 which provided information on enforcement activity, as well as call demand, abstraction, and emerging issues identified by the

forces which they wished to bring to the attention of the Welsh Government. These were collated by the Police Liaison Unit.

37. By way of an example, I exhibit the first weekly update covering 20-27 April 2020 at **M2B-WG-CJD-02/06-INQ000353013**. Weekly reports were provided in this format up to and including the week of 29 June – 6 July; I exhibit the report for that week at **M2B-WG-CJD-02/07-INQ000353075**. Data in these reports was included in the Welsh Government Covid-19 Data Monitor which was collated by the Welsh Government's Knowledge and Analytical Services to provide a summary of key datasets for Ministers and senior officials. I exhibit the update dated 4 May 2020 at **M2B-WG-CJD-02/08-INQ000353032**; I understand that the Data Monitors are described in more detail in Andrew Goodall's statement in response to M2B-WG-01.

38. The weekly Policing in Wales updates were also used to inform the 21-day review process. For example, advice was submitted to the First Minister on 28 May via MA/FM/1722/20 (exhibited at **M2B-WG-CJD-02/09-INQ000176849**) in respect of the 21-day review which was due that day. This advice recommended the replacement of the 'stay at home' provisions with 'stay local' provisions, and to allow two households to meet outside subject to social distancing requirements. Supporting document 4 to the Ministerial Advice (Assessment of pre-conditions, exhibited at **M2B-WG-CJD-02/10-INQ000048831**) referenced the update provided by the Welsh forces on 26 May (exhibited at **M2B-WG-CJD-02/11-INQ000353566**). That document also reflected information on local authority enforcement activity as outlined in the next section below.

39. I understand that statement M2B/WG/JJS (paragraphs 237-241) provides commentary on challenges faced by police forces in enforcing restrictions during summer 2020, including involvement of police forces in communication and engagement strategies.

Local authority enforcement

40. As set out above, during periods when the 'stay at home' restrictions applied, enforcement of these restrictions was largely a matter for the police. I understand that in M2B-WG-JJS, Julie James provides further commentary on the role of local authorities as enforcement agencies for regulations, including enforcement of the decision for all non-essential businesses to close in March 2020, and enforcement

actions in Gypsy/Traveller sites (M2B-WG-JJS, paragraph 111). Although many businesses were required to close during the lockdown, essential services such as supermarkets and pharmacies remained open, and local authority Environmental Health Officers were responsible for enforcement of the regulations which applied to these premises (such as social distancing requirements).

41. Local authorities began to collect data on enforcement activity from early in the pandemic, which was subsequently collated into a database, the development of which was led by the Welsh Local Government Association (WLGA) and managed by Data Cymru. Data Cymru is a Welsh local government company with a Board of Directors elected by the Welsh Local Government Association, which offers a range of specialist services for the effective sourcing and use of data. This is a live database and therefore cannot be exhibited, so a link to the live database can be found here: <https://data.cymru/reports/la-enforcement-activity?q=laen21>. The first report dated 25 March – 26 June 2020 is exhibited at **M2B-WG-CJD-02/12-INQ000353567**.
42. Local authority enforcement data as exhibited above was included in the data monitors from the monitor dated 17 May 2020. Enforcement data was provided by the local authorities on a three-week cycle to Data Cymru, who collated the data and submitted it a Welsh Government Environmental Health Adviser throughout the pandemic. This information was then summarised and explained in a report which was submitted to the 21-day review team and similar reports were provided for subsequent reviews.
43. Regular feedback on local authority enforcement activity was also provided through the SBAR process. SBAR stands for situation, background, assessment, recommendation, and during the pandemic it was used as a structured form of two-way communication between the Welsh Government, local authorities, and local health boards.
44. In the context of the pandemic, the SBAR process involved each of the regional/local Incident Management Teams sending weekly intelligence on a range of issues relating to the pandemic, which included a section on regulation/monitoring compliance. This was submitted to the Welsh Government's Health Protection Division, where it would be reviewed and collated into a single national SBAR back to all the Incident Management Teams which provided a national overview of the information and provided updates on changes to guidance and answers to queries

raised. This process was put into place from September 2020, and I exhibit an example of the national weekly updates at **M2B-WG-CJD-02/13-INQ000353169**.

Fixed Penalty Notices

45. The general approach to the use of Fixed Penalty Notices is covered in my statement in response to M2B-RK-01. In particular, I noted that some alignment with other UK nations particularly England was necessary to discourage activity moving across the border to Wales. Given the speed of the decision-making during this period full impact assessments were not always available, these are exhibited where available and information on impact assessments is provided earlier in this statement.
46. In May 2020, the UK Government increased the fine amounts for breaches of the Coronavirus Regulations (England), the change coming into force on 13 May. The fine for a first offence had been £60, rising to £120 for a second offence. The changes, which the UK Government had introduced in consultation with police forces, increased the fine for a first offence to £100, which doubled for each subsequent offence up to a maximum of £3,200.
47. As a result, Police and Crime Commissioner Dafydd Llywelyn (Chair of the Policing in Wales Group) and Chief Constable Carl Foulkes (Chair of the Welsh Chief Officers' Group) wrote to the First Minister on 15 May setting out the joint position of Police and Crime Commissioners and Chief Constables in Wales, which was advocating for an equivalent increase to the fines for breaches of the Welsh regulations. The First Minister replied on 18 May requesting further evidence to support their case, which was submitted that day. I exhibit the letters at **M2B-WG-CJD-02/14-INQ000353051** and **M2B-WG-CJD-02/15-INQ000353568**.
48. On 19 May, the First Minister received Ministerial Advice (MA/FM/1624/20, exhibited at **M2B-WG-CJD-02/16- INQ000145221**). The advice, which included the additional evidence provided by the police, sought a decision on three possible options:
- No change,
 - The introduction of multipliers, so that fines would continue to increase for third and subsequent offences, up to a limit of £1,920, or
 - parity with levels of fines in England.

49. The advice noted that the police view was that there had been an increase of non-compliance in the previous few weeks, which was expected to continue; increased traffic into Wales from England; and the complexities brought about by the differences between regulations in England and those in Wales which was felt to be making enforcement difficult. The advice noted the police view that the fines were increased it would act as a natural deterrent to those intent on breaching the restrictions, but also that the evidence presented did not provide a convincing argument that levelling up the Fixed Penalty Notices fines between the two countries would create any greater deterrent to those travelling from England or Welsh people travelling within Wales.

50. Having considered the advice, the First Minister agreed to the second option – the introduction of multipliers, so that fines would continue to increase for third and subsequent offences, up to a limit of £1,920, on the basis that that the evidence provided did not support going beyond that. The First Minister also indicated that the matter should be kept under review if the police brought forward further evidence. I exhibit his response at **M2B-WG-CJD-02/17-INQ000353055**.

51. On 24 August 2020, the First Minister received Ministerial Advice MA/FM/2787/20 in respect of the organisation or facilitation of unlicensed events in breach of the Coronavirus regulations. The advice noted that the UK Government was introducing a new offence of organising (or otherwise being involved in holding) illegal raves, unlicensed music events, or any unlawful gathering over 30 people; and that they were also proposing to allow those accused of the offence to be liable to pay a fixed penalty of £10,000 as an alternative to prosecution. These changes were being introduced as a deterrent and would come into force from 28 August, and Welsh police forces had asked the Welsh Government to consider something similar in Wales. I exhibit the Ministerial Advice at **M2B-WG-CJD-02/18- INQ000145224**.

52. The advice noted that there had been a significant increase in unlicensed music events in England, including in the northwest of England, and that there was concern about such events being displaced into North Wales. The Ministerial Advice sought a decision from four options:

- No change, so that the same penalties would apply to both organisers and attendees at such events,
- creating an offence in Wales to organise an event at which persons were gathered in contravention of the regulations,

- creating the offence and linking it with a Fixed Penalty Notice to the level suggested by the UK Government (i.e. up to £10,000), or
- creating the offence and linking it with a Fixed Penalty Notice at a lower level.

53. The advice also stated that due to the limited time available an integrated impact assessment had not been carried out, but that relevant impact assessments would be carried out retrospectively, having regard in particular to the likely impact on young people. The First Minister expressed reservations about a penalty of that size, though considered that the deterrent element was important, particularly to dissuade people from organising events in Wales instead of England, should there be disparities between penalties. This response is exhibited at **M2B-WG-CJD-02/19-INQ000353112**. After discussing with the Counsel General and Minister for Health the First Minister settled on the option of creating the offence and linking it with a Fixed Penalty Notice to the level suggested by the UK Government (i.e. up to £10,000).

54. The Welsh Government recognised evidence that some groups seemed to receive disproportionate numbers of Fixed Penalty Notices. I exhibit at **M2B-WG-CJD-02/20-INQ000227714** a draft summary impact assessment CAB(21-2)62–Doc 8 which was submitted to Cabinet in December 2020 to inform the review of the regulations and agree whether any changes were required to the protections in place against coronavirus in Wales. The document notes the evidence of a disproportionate number of Fixed Penalty Notices being received by several groups with protected characteristics, including racial disparities, with 10% of Fixed Penalty Notices before 22 September 2020 issued to people identifying as Asian or Chinese, who represented around 2% of the population. Young people were also affected, with 61% of Fixed Penalty Notices in Wales up to this point having been issued to under 35s. Finally, men were disproportionately affected with 76% of Fixed Penalty Notices in this timeframe issued to men. The assessment describes how these impacts would be mitigated, by keeping the levels of Fixed Penalty Notices relatively low, keeping them under regular review and through the continued application by the police of the “4Es approach” where enforcement was a last resort. Fixed Penalty Notices were reviewed again in November as detailed in the following paragraphs.

55. On 30 September 2020, the Cabinet Sub-Committee on Justice requested a rapid review of the use of Fixed Penalty Notices in the coronavirus regulations. The suggestion of this review arose during a discussion about the impact of the pandemic on the justice system and the Welsh Government's justice policy objectives. Officials were asked to explore the evidence and take the views of the police and local authorities on the use of Fixed Penalty Notices, particularly the impact in deterring illegal activities such as unlicensed music events, the definition of a house party, the appropriate level of fines for infringements such as breaching quarantine requirements for international travellers, and to whether enable local authorities to bring prosecutions themselves.
56. Given the time available, the methodology for this review was very simple; a table was produced spelling out all the extant penalties in Welsh law at that moment, and the comparable penalties for similar conduct in other UK nations. This table which is exhibited at **M2B-WG-CJD-02/21-INQ000350017** (document 6 of MA/FM/3803/20) was then used as the basis for discussions at official and ministerial level. Very little evidence was found to be available and, other than in regard to offences where criminality might be displaced across the border (such as the organisation of illegal raves), the review found no evidence that the higher quantum of penalties in England was a more effective deterrent than penalties in Wales.
57. A summary of findings of the Fixed Penalty Notice review was included in the first post-firebreak review of regulations set out in MA/FM/3803/20 and supporting documents. Ministers were asked to note the review and agree in principle to regulatory changes to larger penalties and to the penalties for businesses who did not take all reasonable measures. I exhibit the MA at **M2B-WG-CJD-02/22-INQ000145512**, and the supporting documents (docs 5 and 6) at **M2B-WG-CJD-02/23-INQ000227549** and **M2B-WG-CJD-02/24-INQ000227548**.
58. The approach to the use of Fixed Penalty Notices in Wales varied from that in other parts of the UK, in particular England; as noted above the review identified little evidence to suggest that raising Fixed Penalty Notice rates would be an effective tool to drive compliance. Clear evidence of negative equality impacts and disparities in the distribution of Fixed Penalty Notices based on protected characteristics were noted as grounds for concern. It was considered that reducing the volume of certain

Fixed Penalty Notices and encouraging slightly more cases to be taken to the criminal court would likely have a small positive effect for disadvantaged groups, though the changes were small so potential benefits should not be overstated. The views of the police were also important considerations, as was the potential risk of displacement activity between Wales and England where there were discrepancies between the two regimes.

59. The final changes to regulations put into effect decisions on Fixed Penalty Notices and were introduced with the “Alert Level” regulations due to the worsening public health situation in December 2020 and concerns around transmission during the festive season. It was recommended that fixed penalty notices for events with more than 15 people or 30 outdoors be increased as such events were a specific and recurring issue being raised by Incident Management Teams and the police. This was considered proportionate and in line with previous advice about Fixed Penalty Notice amounts. Changes to regulations conferred authority on local authority officers to enforce the self-isolation provisions and extend the maximum time for which a premises closure could take effect. This advice was contained in MA/FM/4278/20 on 17 December 2020, exhibited at **M2B-WG-CJD-02/25-INQ000176846** and legal advice in document 11 of that Ministerial Advice, exhibited in **M2B-WG-CJD-02/26-INQ000353350**.

Engagement with the UK Government

60. There were regular communications between the Welsh Government, the Home Office, and the other devolved governments; the main purpose of which was to inform how each nation was amending its rules. I have provided details of interactions in my previous statement M2B-WG-RK-01. From March 2020, interactions took place weekly to update on changes and to share learning where there was commonality. There was particular focus on amendments to regulations and the plans under consideration. Minutes were not taken nor circulated. Given the information sharing nature of the engagement actions were not recorded.
61. I have referred earlier to the engagement and communication between the Welsh Government and local authorities in Wales; I am not able to comment upon the extent (if any) of Welsh local authority engagement with the UK Government.

Welsh Language

62. The Welsh Language (Wales) Measure 2011 made Welsh an official language in Wales. This means it must be treated no less favourably than English and requires public bodies to provide services in Welsh. The Welsh Government's regulations, guidance, and communications are provided in English and in Welsh as default. These requirements were no less during the pandemic; in line with the regulations set out above, communications were provided in both English and Welsh in relation to NPIs and enforcement throughout the pandemic including bilingual press conferences, guidance documents, and messaging to the public. An example is set out in Exhibit **M2B-WG-CJD-02/27–INQ000080844**.

63. The overarching “Diogelu Cymru - Keep Wales Safe” message was developed by the Welsh Government in May 2020 as a distinctively Welsh brand to communicate the regulations in Wales. I understand that details of the Diogelu Cymru - Keep Wales Safe campaign are set out in Andrew Goodall's statement, M2B-WG-01 and that Toby Mason's statement M2B-WG-CD-01 (paragraphs 17-21) detail how Ministers were involved to ensure that they were content with the messages being given to the public. M2B-WG-CD-01 (paragraph 22) further describes proactive measures to reach communities across Wales.

Reflections/lessons learned

64. As I explain elsewhere, the regulatory and legislative regime put in place in Wales was regularly tested to ensure it remained proportional to the public health challenge and was relaxed or strengthened as necessary. The enforcement measures supporting the regime were therefore introduced and removed in line with that assessment of proportionality. Similarly, the rapid review of fixed penalties identified areas where changes may have disproportionately increased the impact on some groups in society and these changes were not made as a consequence.

65. It is my view that this ongoing scrutiny of enforcement and penalties worked well in maintaining a set of credible measures. In considering whether we missed opportunities to increase the effectiveness of the measures, or increase public compliance with them, against a background of relatively high compliance by the public and business, and the finite resources available to enforce those measures within the

police services and local authorities, it is unlikely that additional or more stringent measures would have had any material impact.

66. Nonetheless, the Welsh Government did support the creation of joint enforcement teams comprising members of the Police and local authority Environmental Health Officers partly financing them through the Hardship fund. This provided stronger and more coherent enforcement on the ground. An example of successful enforcement is provided at paragraphs 162 of my M2B-RK-01 relating to Cinema&Co. There will have been other successful examples of enforcement which did not engage the Welsh Government.

Statement of truth

I believe that the facts stated in this witness statement are true. I understand the proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth.

Signed:

Personal Data

Dated:

1st December 2023