



Ministry
of Justice



Attorney
General's
Office

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

The Right Honourable
Suella Braverman QC MP
Attorney General

Rt Hon Mark Drakeford MS
Welsh Government
Cardiff Bay
Cardiff
CF99 1SN

8 February 2021

Dear Mark,

USE OF SINGLE JUSTICE PROCEDURE IN WALES

Thank you for your letter dated 23rd October 2020, and for the recent engagement with your officials regarding the use of the Single Justice Procedure (SJP) in the prosecution of coronavirus regulations offences.

We understand that you have some specific concerns about the use of SJP in Wales, and whether there is a need for it at this current time. We are grateful for your consideration of the matter but having considered this issue in more detail, we believe there is a clear rationale for continuing to use the SJP across England and Wales. Furthermore, this letter is to inform you that the Attorney General will be making an Order imminently which would mean that the Crown Prosecution Service (CPS) is not obliged to take over conduct of proceedings for all existing coronavirus regulations offences.

Rationale for the use of the Single Justice Procedure

Our view is that the SJP is the most effective tool for managing coronavirus regulations offences through the courts system. The alternative to SJP is for cases to be prosecuted by requisition which is less efficient for the following reasons:

- Cases can be heard on any date and any place through the SJP process; the requisition process is less flexible as cases must be heard on a specific date in a specific court.
- The SJP process only requires one magistrate and one legal adviser working remotely proving both cost effective and, more importantly, safer without any impact on the delivery of justice. The requisition process is more resource intensive and costly, as it requires more than one magistrate, an usher and a CPS prosecutor. In addition, the requisition process requires more input by the police, and requires input by the CPS. In SJP cases, the CPS is not involved unless a defendant pleads not guilty, or the single justice refers the case to a hearing in which CPS prosecutes;
- Each additional requisition case places pressure on the system by taking up court time and delaying other cases. Furthermore, defendants are required to attend court for requisition hearings whilst SJP cases can be managed remotely. This increases footfall into the courts at a time when courts are being encouraged to conduct hearings remotely where possible due to the national lockdown restrictions; and
- Currently, in many parts of England and Wales, a requisition case takes double the time from issuing the charge to first hearing (c.56 days in comparison to 28 days). As requisitions tend to take longer to be processed than single justice notices, there is a greater risk of a defendant changing address and not receiving notice of the court hearing.

**Irrelevant &
Sensitive**

E <https://contact-moj.dsd.io/>
www.gov.uk/moj

102 Petty France
London
SW1H 9AJ

INQ000104062_0001

The Attorney General previously considered making an Order to cover all existing coronavirus regulations offences back in August but did not feel it was necessary at the time. Since that point, there have been a number of contextual changes:

- The volume of FPNs had dramatically increased; there was an estimated additional 16,000 FPNs issued over a 4-week period from December to January. This was in comparison to only 15 over the preceding 4 weeks when the Attorney General previously considered this issue.
- When making her initial decision not to make the Order, the Attorney General suggested that the CPS make arrangements to take conduct of these prosecutions under SJP, rather than the police. However, the CPS have been unable to develop the processes and software to prosecute these cases under SJP. This means that they would need to prosecute these cases by requisition in GAP and N/GAP (Guilty/Not Guilty Anticipated Plea) courts.
- Police Forces, through the National Police Chiefs' Council (NPCC), have also taken steps to address the concerns around disproportionality and mis-charging:
 - With regard to disproportionality, the NPCC have worked with the Home Office in two separate pieces of analysis on police enforcement of the Regulations; one has been published with the second to follow in February. The focus has been an assessment of the impact of the enforcement activity across the community and, in particular, those from BAME communities. A third review is also underway.
 - With regard to mis-charging, the NPCC has since worked with partners to understand and mitigate these errors. This has included hosting SJP error workshops with colleagues from the police, HMCTS and the CPS. As a result, forces have been provided with guidance and support and there has been an improvement in quality. In addition, many forces have embedded a third supervisory review at all stages of the process which is helping to identify and rectify errors.

As a result of the above, the Attorney General will now make the Order, meaning that the CPS would not be obliged to take over conduct of proceedings for existing coronavirus regulations offences, allowing them to be prosecuted through the Single Justice Procedure (SJP). This enables the police to prosecute the case to a conclusion.

Current situation in Wales

The way the courts in Wales have adapted and responded to this challenging situation is undoubtedly a success; however significant challenges remain. In order to maintain current performance a monumental ongoing effort is required, and we are pleased that everyone is playing their part. Many hearings are now conducted remotely in order to reduce footfall in buildings; introducing a large number of defendants into any courthouse would create additional unnecessary risks. It is not the case that these cases could be listed in a court without other work having to be delayed.

Your letter noted that it is essential for the public to have confidence in the consistent, fair and effective enforcement of coronavirus offences. In particular, you highlighted that coronavirus related regulations made in Wales permit any individual with a reasonable excuse to lawfully undertake actions that would otherwise be an offence. It is correct that defendants in coronavirus cases have a defence of reasonable excuse. However, they are informed of that fact as the charge in the single justice notice states expressly that the defendant has breached a restriction (etc) *without reasonable excuse*. Defendants are thus alerted to the defence and are also advised of their right to plead not guilty. It is also important to note that it is not possible to compel the attendance, nor enforce the appearance, of a defendant whether cases are

prosecuted by the single justice procedure or by requisition. Justices in England and Wales have been assiduous in scrutinising the evidence in coronavirus case in single justice hearings with about 10% of defendants having been acquitted. Therefore, we do not think there are grounds to allege that magistrates are not dealing properly and fairly with these cases in single justice hearings. Thus, defendants on requisition receive the same information as defendants on a single justice notice.

Your officials have queried whether there is a significant backlog of these cases in Wales. Whilst there was no significant backlog in Wales prior to the pandemic, Welsh courts have been directly affected by the virus and this has placed additional pressure on the system. Cases involving allegations of domestic abuse and those involving young people must take priority and to delay this work to create space in court lists for offences that can quite properly be dealt with via the SJP process would not be appropriate. Furthermore, each region across England and Wales has a flow of coronavirus regulation offences cases which have not yet come to court. As of 19th January, the approximate number of cases in Wales was at least 706, with 59 cases awaiting Force decision; the total number across the six regions in England was 4,218 cases with 619 awaiting decision. The Welsh share of cases is 9.4%, which is higher than some English regions, even those with a greater overall caseload. Furthermore, these figures are rising as Fixed Penalty Notices continue to be issued, and we estimate that if these cases are handled through the requisition process, they will add c.28 days' waiting time to court across the whole of Wales. This will result in delays to all criminal proceedings.

We hope the information included in this letter sets out a clear rationale for the use of the SJP in Wales and mitigates your previous concerns. Once again, we are grateful for your consideration of this issue, and for the constructive engagement with your officials.

Yours ever

Personal Data

RT HON ROBERT BUCKLAND QC MP

Personal Data

RT HON SUELLA BRAVERMAN QC MP