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MEMORANDUM E (20) 239 (C)

FROM: NAOMI LONG MLA
MINISTER FOR JUSTICE

DATE: 8 OCTOBER 2020

TO: EXECUTIVE COLLEAGUES

**FINAL EXECUTIVE PAPER: REVIEW OF OFFENCES AND PENALTIES FOR
BREACHES OF COVID RESTRICTIONS**

1. It was proposed at a meeting of the strategic enforcement group chaired by the TEO Junior Ministers that a review should be undertaken of the existing offences and penalties available in respect of breaches of public health regulations. The need for the review has resulted from concerns that the levels of penalty are insufficient to act as a deterrent and against the context of rapidly rising cases. I have briefed the Executive previously on PSNI views, although as I have emphasised, enforcement is not the sole responsibility of the PSNI.
2. A summary of our current offences and penalties, alongside those in use in other parts of the UK and in ROI, is attached at **Annex A**.

Options

3. The following options have been identified:
 - a. More robust use of the existing enforcement regime
 - b. Adopt higher level fines in keeping with other UK jurisdictions

Each of these options is considered in more detail below.

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More robust use of the existing enforcement regime

4. You will recall that when each of the current restrictions were introduced, it was agreed that a light touch approach should be taken to enforcement, with the emphasis instead being on engaging, explaining and encouraging people to adhere to the restrictions. We agreed collectively that the imposition of penalties should be considered a last resort and should be reserved for cases where there has been blatant and wilful disregard of those restrictions that have been included in regulations. Whatever decision we reach on levels of penalty, the relevant enforcement agency will always have some discretion as to how to operate and continued use of the first 3 'E's will remain appropriate in some circumstances.
5. There is, of course, no legal basis for taking enforcement action in respect of restrictions contained in guidance. Also, although there is provision in the regulations for the doubling or progressive increase - or 'laddering' – of the level of fines (with the exception of certain of the fines relating to international travel), this has not yet been much used in practice since the vast majority of those being fined are not repeat offenders but this could become more of a feature if the fines are needed for a sustained period. Given the small number of cases where laddering has been applied, the impact is difficult to assess.
6. To date, enforcement action has been guided by public health risks and targeted mainly on large gatherings and licensed premises. We need to recognise that the PSNI are already stretched in capability terms – with crime levels at or near pandemic levels currently – and they will retain operational independence to determine where the greatest harm is likely to occur. Any intensification of enforcement action based on the existing regime of offences and penalties would, therefore, require a co-ordinated effort by a range of agencies.
7. Despite competing pressures, the PSNI has to date issued:
 - 1,156 COV1s
(£60+ fine for breaches of the public health regulations)

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- 203 COV2s
(prohibition notice for licensed premises or for restriction of gatherings in a private dwelling)
- 27 COV3s
(£1,000 fixed fine for failure to self-isolate following international travel)

Adopt higher level fines in keeping with other UK jurisdictions

8. There are a number of offences that we do not currently have in Northern Ireland or for which a higher level of fine is applied elsewhere. It should be noted that there would be a **lead-in period of approximately two weeks** for the introduction of any new penalties, including any increase to the level of an existing fixed penalty.
9. If the Executive is minded to agree to extend the range of offences punishable by fixed penalty notice (FPN), we have proposed using a single tariff point for the vast majority of cases and have tagged that to the £200 proposed fine for use of a mobile phone when driving which the Minister for infrastructure is planning to introduce. In lieu of laddering, subsequent offences would be dealt with through the courts. The alternative would be to continue to have a laddered fine, starting at £200 and 'laddering' to either £6,400 or £3,200. By way of comparison, the current FPN most commonly in use, which starts at £60 (or £30 if paid within 14 days), is the lowest FPN penalty in use in policing and is below the level of those used for such offences as littering, dog fouling and parking breaches. The level of fine will inevitably influence perceptions of how serious it is to breach restrictions.
10. In addition, we need to be very mindful that as we are able to remove restrictions we should also take the time to examine thoroughly all offences and remove any that would then be anomalous.

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11. In determining any changes, the Executive will need to be satisfied that the creation of an offence or the level at which a fine is set is proportionate and,

therefore, likely to be human-rights compliant

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Taking these

factors into account, the following menu of offences and penalties could be considered.

Offence	Current penalty	Proposed penalty	Comment
Not wearing a face covering	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine not exceeding level 5 FPN - £200 (£100 if < 14 days)	
Not wearing a face covering on public transport	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine not exceeding level 5 FPN - £200 (£100 if < 14 days)	
Not closing a business as required	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on conviction by a fine not exceeding £10,000 FPN - £1,000 / £2,000 / £4,000 / £10,000	Although the highest FPN elsewhere is £200 (£100), doubling to £6400, there is merit in having consistency with the similar offence of "Breaching the early closing requirements for hospitality".
Gathering in a public place	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine not exceeding level 5 FPN - £200 (£100 if < 14 days)	

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Gathering in a private dwelling	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine not exceeding level 5 FPN - £200 (£100 if < 14 days)	
Organizing a large gathering / unlicensed music event	None	Punishable on conviction by a fine not exceeding £10,000 FPN - £10,000	This currently applies to England and Wales and was introduced in anticipation of illegal raves and other large-scale social events.
Breaching the early closing requirements for hospitality	None	Punishable on conviction by a fine not exceeding £10,000 Premises owners FPN - £1,000 / £2,000 / £4,000 / £10,000 Individuals attending FPN - £200 (£100 if < 14 days)	
Requirements upon travellers to provide information	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine not exceeding level 5 FPN - £200 (£100 if < 14 days)	
Requirements upon travellers to self-isolate	Punishable on summary conviction by a fine not exceeding level 5 FPN - £1000	Punishable on summary conviction by a fine not exceeding level 5 FPN £1,000	England is considering increasing the maximum FPN to £10,000
Requirements upon travel operators to provide public health information	Punishable on summary conviction by a fine not exceeding £10,000	Punishable on conviction by a fine not exceeding £10,000	
Not implementing measures to maintain social distancing	None	Punishable on conviction by a fine not exceeding £10,000 FPN - £1,000 / £2,000 / £4,000 / £10,000	This would apply to the retail and hospitality sector

12. The table below sets out the offences we do not advocate introducing or for which we are not recommending a change in the level of fine at this time. However, for

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the purposes of discussion at Executive, we have indicated what a penalty or higher level fine could be.

Offence	Current penalty	Potential penalty	Comment
<u>Organizing a large gathering / unlicensed music event</u>	<u>None</u>	<u>Punishable on conviction by a fine not exceeding £10,000</u> <u>FPN - £10,000</u>	<u>This currently applies to England and Wales and was introduced in anticipation of illegal raves and other large-scale social events.</u> <u>While we are not ruling out this option, we think it would be prudent to undertake some further work to satisfy ourselves that the offence is necessary and the level of fine proportionate. We will also need to reach a view on how we wish to define 'large' gatherings.</u>
Not recording visitor data	None	Punishable on conviction by a fine not exceeding £10,000 FPN - £1,000 / £2,000 / £4,000 / £10,000	
Attending parties of over 16	None	Punishable on summary conviction by a fine not exceeding level 5 FPN - £200 (£100 if < 14 days)	This scenario could be covered by the existing restrictions on private gatherings.
Local prohibitions in respect of specific premises and events	None	Punishable on summary conviction by a fine FPN - £200 (£100 if <14 days)	.
Breaching restrictions on entering or leaving local health protection areas	None	Punishable on summary conviction by a fine not exceeding level 5 FPN - £200 (£100 if < 14 days)	This would create a new offence which would be challenging to enforce. This is only unlawful in Wales at present, where a FPN starting at £60 applies. If adopted, a FPN of £200 could be

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			considered for the purposes of consistency.
Not self-isolating after displaying symptoms (or "after a positive test" might be more realistic?)	None	Punishable on summary conviction by a fine not exceeding level 5 FPN - £200 (£100 if < 14 days)	

RECOMMENDATION

13. The Executive is invited to agree to **option b.** (adopt higher level fines in line with other UK jurisdictions) and that this should apply as follows:

- the existing fixed penalty notices (FPN) which start at £60 doubling to £960 should be replaced by a fixed FPN of £200;
- the offence of not closing a business as required should be punishable on conviction by a fine of up to £10,000 or attract a FPN starting at £1,000 and 'laddered' up to a maximum of £10,000;
- ~~a new offence should be introduced of organising a large gathering or unlicensed music event punishable on conviction by a fine of up to £10,000 or a FPN of £10,000;~~
- a new offence should be introduced of breaching the early closing requirements for hospitality punishable on conviction by a fine of up to £10,000 or a FPN starting at £1,000 and 'laddered' up to a maximum of £10,000;
- a new offence should be introduced of not implementing measures to maintain social distancing punishable on conviction by a fine of up to £10,000 or a FPN starting at £1,000 and 'laddered' up to a maximum of £10,000; and
- penalties should remain unchanged for the existing offences of failing to self-isolate after international travel or, for travel operators, of failing to provide public health information.

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14. I am copying this paper to the Attorney General and Departmental Solicitor, and to First Legislative Counsel.

**NAOMI LONG MLA
MINISTER OF JUSTICE**

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ANNEX A

Offence	NI	England	Scotland	Wales	Rol
Not wearing a face covering	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £200 (£100) Doubling to £6400	Liabe, on summary conviction, to a fine not exceeding the statutory maximum. FPN - £60 (£30 if <28 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £60 (£30 if <14 days) Doubling to £1920	Liabe on summary conviction to a class C fine (max. €2,500) or to imprisonment for a term not exceeding 6 months, or both.
Not wearing a face covering on public transport	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £200 (£100) Doubling to £6400	Liabe, on summary conviction, to a fine not exceeding the statutory maximum. FPN - £60 (£30 if <28 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £60 (£30 if <14 days) Doubling to £1920	Liabe on summary conviction to a class C fine (max. €2,500) or to imprisonment for a term not exceeding 6 months, or both.
Not closing a business as required	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £200 (£100 if <14 days) Doubling to £6,400	Liabe, on summary conviction, to a fine not exceeding the statutory maximum. FPN - £60 (£30 if <28 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £60 (£30 if <14 days) Doubling to £1920	Liabe on summary conviction to a class C fine (max. €2,500) or to imprisonment for a term not exceeding 6 months, or both (depending upon the business)
Not implementing measures to maintain social distancing		Punishable on summary conviction by a fine FPN - £1,000 Increasing to £2,000/£4,000/£10,000	Liabe, on summary conviction, to a fine not exceeding the		

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		with each subsequent offence.	statutory maximum. FPN - £60 (£30 if <28 days) Doubling to £960		
Not recording visitor data		Punishable on summary conviction by a fine FPN - £1,000 Increasing to £2,000/£4,000/£10,000	Liable, on summary conviction, to a fine not exceeding the statutory maximum. FPN - £60 (£30 if <28 days) Doubling to £960		
Gathering in a public place	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £200 (£100 if <14 days) Doubling to £6,400	Liable, on summary conviction, to a fine not exceeding the statutory maximum. FPN - £60 (£30 if <28 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £60 (£30 if <14 days) Doubling to £1920	Liable on summary conviction to a class C fine (max. €2,500) or to imprisonment for a term not exceeding 6 months, or both.
Gathering in a private dwelling	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £200 (£100 if <14 days) Doubling to £6,400	Liable, on summary conviction, to a fine not exceeding the statutory maximum. FPN - £60 (£30 if <28 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £60 (£30 if <14 days) Doubling to £1920	
Attending parties of over 16			Liable, on summary conviction,		

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			to a fine not exceeding the statutory maximum. FPN - £60 (£30 if <28 days) Doubling to £960		
Organizing a large gathering / unlicensed music event		Punishable on summary conviction by a fine FPN - £10,000		Punishable on summary conviction by a fine FPN - £10,000	
Breaching the early closing requirements for hospitality		Punishable on summary conviction by a fine FPN - £1,000 / £2,000 / £4,000 / £10,000		Punishable on summary conviction by a fine FPN - £60 (£300 if <14 days) Doubling to £1920	
Local prohibitions in respect of specific premises and events		Punishable on summary conviction by a fine FPN - £200 (£100 if <14 days) Doubling to £3,200			
Requirements upon travellers to provide information	Punishable on summary conviction by a fine not exceeding level 5 FPN - £60 (£30 if <14 days) Doubling to £960	Punishable on summary conviction by a fine FPN - £200 (£100 if <14 days) Doubling to £3,200	Liable, on summary conviction, to a fine not exceeding level 5 on the standard scale. FPN - £60 (£30 if <28 days) Doubling to £480)	Punishable on summary conviction by a fine FPN - £60 (£30 if <14 days) Doubling to £1920	

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Requirements upon travellers to self-isolate	Punishable on summary conviction by a fine not exceeding level 5 FPN - £1000	Punishable on summary conviction by a fine FPN £1000 (<i>TBC – increasing to maximum of £10,000</i>)	Liable, on summary conviction, to a fine not exceeding level 5 on the standard scale. FPN - £480	Punishable on summary conviction by a fine FPN - £1000	
Requirements upon travel operators to provide public health information	Punishable on summary conviction by a fine not exceeding £10,000		Liable on conviction on indictment to a fine	Punishable on summary conviction by a fine FPN - £4000	
Breaching restrictions on entering or leaving local health protection areas				Punishable on summary conviction by a fine FPN - £60 (£30 if <14 days) Doubling to £1920	

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