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MEMORANDUM E (20) 242 (C)

FROM: NAOMI LONG MLA
MINISTER FOR JUSTICE

DATE: 15 OCTOBER 2020

TO: EXECUTIVE COLLEAGUES

FINAL EXECUTIVE PAPER: REVIEW OF OFFENCES AND PENALTIES FOR BREACHES OF COVID RESTRICTIONS - POTENTIAL NEW OFFENCE FOR LARGE GATHERINGS AND UNLICENSED MUSIC EVENTS

1. At our meeting on 8 October, we considered a paper on the rapid review of offences and penalties for breaches of public health regulations relating to COVID-19. The decisions we took on foot of that discussion are at **Annex A**.
2. The Executive also asked that further consideration should be given to a potential new offence in respect of large gatherings and unlicensed music events. This paper offers further detail on this proposed offence for the Executive's consideration.

Current Position – England and Wales

3. In both England and Wales, there is an offence of organising large gatherings and music events, which is punishable on conviction by a fine (unlimited) or a fixed penalty of £10,000. The offence is intended to apply to raves and private parties. 'Large' is defined as 30 or more persons and there is a specific provision prohibiting a person from holding a 'section 63 type' gathering, which draws on the definition of 'rave' set out in the Criminal Justice and Public Order Act 1994¹.
4. There have only been 18 fixed penalties issued for gatherings of 30 people or more in England and two in Wales. We are not aware of any legal challenges having been made to the penalties issued in England or Wales.

¹ This provision relates to England and Wales only and defines a rave as a gathering of 20 or more persons at which amplified music is played during the night.

Position in NI

LPP/LAP

6. As an Executive, therefore, we need to be satisfied that the creation of this offence is both necessary and proportionate.

Existing offences

7. There are existing offences under the public health regulations in relation to gatherings and events, punishable by a fine on summary conviction or a fixed penalty, with the levels now due to increase and new offences to be introduced following the Executive's decisions on 8 October. Offences of not closing a business as required, breaching the early closing requirements for hospitality and not implementing measures to maintain social distancing, will all impose the same penalties on owners of premises (punishable on summary conviction of a fine not exceeding £10,000 or a FPN starting at £1,000 and 'laddering' to £10,000 for subsequent offences).
8. The existing higher level fines relating to public health restrictions which will apply to owners of premises would not, for instance, cover organisers of outdoor events such as festivals or open air concerts, public protests or private parties. Lower level penalties will be available for those who either organise or attend gatherings in a public place or in a private dwelling (punishable on summary conviction by a fine not exceeding £5,000 or a FPN of £200, or £100 if paid within 14 days).

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9. There are, of course, other offences available outside the public health regulations, such as offences relating to public order, some of which include provision for penalties notices for disorder ranging from £40 to £80. There is a common law offence of unlawful assembly that has an unlimited fine as a penalty and, under the Public Order (NI) 1987, there is an offence of taking part in a prohibited meeting that has up to 6 months imprisonment and / or a level 5 (£5,000) fine available on summary conviction. And, finally, under the Public Processions (NI) Act 1998 there is an offence of organising or taking part in a prohibited protest meeting that also has up to 6 months imprisonment and / or a level 5 fine on summary conviction.

Is the offence necessary and proportionate?

10. The Executive Office has been maintaining a consolidated list of forthcoming events for which, currently, there is no cap on numbers. Only a low level fine applies for either attending or organising if the event breaches Covid restrictions. There has been one incidence of an illegal rave here (11 October) involving 100 people, for which the DJ received a COVID 1 notice (FPN of £60).
11. The Chief Medical Officer has suggested there may be a case to be made that the proposed offence is necessary as a deterrent and, as such, he would contend from a public health perspective that its introduction would be proportionate, given the risks to health. While the offence may not occur frequently in this jurisdiction, the risks to public health could be significant when it does.
12. We would propose, therefore, that the offence is necessary to cover a gap in existing public health legislation in relation to those organising large events, including unlicensed music events, during the pandemic.

How should 'large gathering' and 'unlicensed music event' be defined?

13. It is proposed that a 'large gathering' is defined as 30 or more persons. This is in line with the use of 30 or more in relation to our own earlier provisions relating to outdoor gatherings, and aligns with the position in England and Wales. As for England and Wales, the offence would seek to capture raves and private parties.

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14. For 'unlicensed music event', we could follow the approach they have taken and adopt a similar definition of 'rave'.

Level of Fine

15. The single fixed penalty of £10,000 which applies in England and Wales is significantly higher than the fixed penalties we have or will shortly have for Northern Ireland. An alternative approach might be to peg this offence to the broadly comparable penalties being introduced for business owners – i.e. a fixed penalty that would start at £1,000 and be 'laddered' up to £10,000 or a fine on summary conviction of up to £10,000. We could also continue to distinguish between those in charge of events and those attending, with the new lower level penalty (£200) for the latter.

Implementation

16. As well as requiring a change to the main public health regulations, there would be a lead-in period of approximately two weeks for the introduction of the new offence (to enable the creation of a number of new notices).
17. The PSNI will, of course, continue to have to determine how to prioritise competing operational demands and, as I have said previously, if the Executive wish to see any intensification of the level of enforcement activity, we need to recognise that the burden cannot fall on the PSNI alone.

RECOMMENDATION

18. The Executive is invited to agree to:
 - the creation of a new offence of organising or participating in large gatherings and unlicensed music events;
 - defining a 'large gathering' as consisting of 30 or more persons;

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- applying penalties consistent with the existing suite of penalties, as set out in paragraph 14 above; and
- defining an unlicensed music event in line with the definition of 'rave', for which the limit would also be 30 persons.

**NAOMI LONG MLA
MINISTER OF JUSTICE**

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At its meeting on 8 October, the Executive agreed to the following recommendations:

- the existing fixed penalty notices (FPN) which start at £60 doubling to £960 should be replaced by a fixed FPN of £200 (£100 if paid within 14 days);
- 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 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.