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**From:** Rooney, Bernie [/O=NIGOV/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C7CF96A1C4A84DCC99B0D59D6BCDBFCB-BERNIE ROONEY 0749]  
**Sent:** 11/04/2020 4:47:03 PM  
**To:** TEO CCPB [ccpb@executiveoffice-ni.gov.uk]  
**Subject:** COVID -19 EMERGENCY CORONAVIRUS BILL - DRAFT INSTRUCTIONS - MASS GATHERINGS - LEGISLATIVE PROVISION

TRIM

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**From:** Rooney, Bernie  
**Sent:** 13 March 2020 9:37 AM  
**To:** Toogood, Peter <Peter.Toogood@executiveoffice-ni.gov.uk>  
**Cc:** Browne, Mark (Deputy Secretary) <Mark.Browne@executiveoffice-ni.gov.uk> [NR]  
[NR]@finance-ni.gov.uk; [NR]@executiveoffice-ni.gov.uk; [NR]  
[NR]@executiveoffice-ni.gov.uk; Stewart, Chris (DFE) <Chris.Stewart@economy-ni.gov.uk>; McBurney, Joanne <Joanne.McBurney@finance-ni.gov.uk>  
**Subject:** RE: CURRENT POSITION - DRAFT INSTRUCTIONS - MASS GATHERINGS - LEGISLATIVE PROVISION

Peter

This is requested as Desk Immediate. It is required by noon today as it is to feed into the Draft Coronavirus Bill that is being drafted at a punishing pace and is to be finalised by OLC his evening.

Ministers, FM dFM and Minister Swann decided in COBA, chaired by the PM this week that NI would wish to 'level' with the

As per our previous correspondence, where you helpfully sought advice from Joanne Mc Burney.

In my view this is p, as per Chris Stewart's email something that HMT needs to advise on.

From the lawyers tele conference it is my understanding ( I haven't been involved) England has not yet formed a view. This is therefore not helpful to the DAs however, the clear message from PM is that this is a matter for Devolved Administrations to consider and decide for themselves. Perhaps DoF can get further insight from HMT.

Sorry that I cannot be more helpful but this is genuinely all that I know.

Bernie

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**From:** Toogood, Peter <[Peter.Toogood@executiveoffice-ni.gov.uk](mailto:Peter.Toogood@executiveoffice-ni.gov.uk)>  
**Date:** Friday, 13 Mar 2020, 9:23 am  
**To:** Rooney, Bernie <[Bernie.Rooney@executiveoffice-ni.gov.uk](mailto:Bernie.Rooney@executiveoffice-ni.gov.uk)>  
**Cc:** 'Stewart, Chris (TEO)' <[chris.stewart@executiveoffice-ni.gsi.gov.uk](mailto:chris.stewart@executiveoffice-ni.gsi.gov.uk)> [NR]  
[NR]@executiveoffice-ni.gsi.gov.uk  
**Subject:** RE: CURRENT POSITION - DRAFT INSTRUCTIONS - MASS GATERINGS

Bernie

Other than seek DoF advice on Wednesday, the emails below are the extent of my knowledge on this.... so am unsure what exactly is required re sub, what you're asking of me and when is it required by?

Grateful for advice pls!!

Peter

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**From:** Rooney, Bernie

**Sent:** 13 March 2020 08:54

**To:** Toogood, Peter <[Peter.Toogood@executiveoffice-ni.gov.uk](mailto:Peter.Toogood@executiveoffice-ni.gov.uk)>

**Cc:** 'Stewart, Chris (TEO)' <[chris.stewart@executiveoffice-ni.gsi.gov.uk](mailto:chris.stewart@executiveoffice-ni.gsi.gov.uk)>

NR

NR <[NR@executiveoffice-ni.gsi.gov.uk](mailto:NR@executiveoffice-ni.gsi.gov.uk)>

**Subject:** FW: CURRENT POSITION - DRAFT INSTRUCTIONS - MASS GATERINGS

Peter

Can you pick up on this sub re Finance piece?

I'm not in the office today and can't do the sub as referred to by Chris.

Apologies I am genuinely not available today.

Joanne Mc Burnley offered lines to take last night.

I will forward the email.

Bernie

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**From:** Stewart, Chris (TEO) <[chris.stewart@executiveoffice-ni.gsi.gov.uk](mailto:chris.stewart@executiveoffice-ni.gsi.gov.uk)>

**Date:** Friday, 13 Mar 2020, 8:35 am

**To:** Rooney, Bernie <[Bernie.Rooney@executiveoffice-ni.gsi.gov.uk](mailto:Bernie.Rooney@executiveoffice-ni.gsi.gov.uk)>, 'TEO Chris Stewart' <[chris.stewart@executiveoffice-ni.gsi.gov.uk](mailto:chris.stewart@executiveoffice-ni.gsi.gov.uk)>

**Cc:** Browne, Mark (Deputy Secretary) <[Mark.Browne@executiveoffice-ni.gsi.gov.uk](mailto:Mark.Browne@executiveoffice-ni.gsi.gov.uk)>, Toogood, Peter

<[Peter.Toogood@executiveoffice-ni.gsi.gov.uk](mailto:Peter.Toogood@executiveoffice-ni.gsi.gov.uk)>

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<[NR@executiveoffice-ni.gsi.gov.uk](mailto:NR@executiveoffice-ni.gsi.gov.uk)>

**Subject:** RE: CURRENT POSITION - DRAFT INSTRUCTIONS - MASS GATERINGS

Bernie

The fines issue appears to be the simpler of the two. We would maintain policy parity with the rest of the UK by making the offence subject to trial via either the summary or indictment route. That is not an uncommon formulation. We should seek DoJ agreement to that, reminding colleagues there that all of this is ad referendum ministers.

The compensation issue is altogether more difficult. If the objective is to maintain policy parity, then we would include a compensation scheme. However, I am not prepared to ask Ministers to agree to an unquantified risk nor, I suspect, would Mark be. (Mark – we can fill in the background and detail to this).

Omitting compensation would need a Ministerial decision. So would including it, preceded by Accounting Officer and DoF approval. I do not think I could recommend such an approach without an HMT guarantee that funding would be forthcoming, or DoF approval to take on the risk. We will need a quick sub on this, including Accounting Officer and DoF advice please.

**From:** Rooney, Bernie [<mailto:Bernie.Rooney@executiveoffice-ni.gsi.gov.uk>]  
**Sent:** 12 March 2020 22:02  
**To:** 'TEO Chris Stewart' <[chris.stewart@executiveoffice-ni.gsi.gov.uk](mailto:chris.stewart@executiveoffice-ni.gsi.gov.uk)>  
**Subject:** CURRENT POSITION - DRAFT INSTRUCTIONS - MASS GATERINGS

Chris

I have worked with [NR] DSO and [NR] OLC and the current position is that two specific issues remain outstanding:-

(i) Compensation payments

There is a lack of clarity around who is going to be paid compensation and how?

Q. Is the Executive going to establish another compensation scheme within TEO and fund from NI Block or will HMT make a fund available. No one is prepared to commit.

In the margins of the meeting yesterday on the draft Bill, FM and dFM commented informally that they were not in favour of paying compensation.

Funding for compensation

DoF advice from Joanne McBurney:-

I cannot provide assurances that funding would be provided.

We are having ongoing discussions with HMT on the response to coronavirus but the latest position is that we will receive Barnett on any allocation to Whitehall departments. If there are any disproportionate or unique costs in NI we can make a case to HMT for additional funding.

As a case has not yet been made in respect of this Bill I cannot provide assurances that funding will be available. Should a similar decision be taken in GB I imagine that we will receive Barnett on any costs but at this point I am not sighted on this.

Scotland may have Article 1 Protocol Rights.

(ii) Offences

DoJ provided a 'limited response' today and following a discussion with [NR] this evening I have gone back to [NR] (DoJ) seeking clarity as per below.

'Solicitors have come back to me seeking further clarity.

It is solicitors understanding that NI does not have unlimited fines on summary conviction – however, NI does have unlimited fines on conviction on indictment.

Solicitors have suggested that providing that the offence can be triable either way i.e. in a magistrates court or the Crown Court. This would enable an unlimited fine to be imposed in the Crown Court if the case was heard there but it would also be possible to provide for a larger fine to be imposed on summary conviction. Article 4(1) of the Fines and Penalties (NI) Order 1984 refers to a statutory provision imposing a larger fine than the prescribed sum (£5k) on summary conviction in relation to an offence triable either way.



IT is the view of solicitors view is that 5k or even 10k is too low to provide an effective deterrent or sanction in the case of a direction made by TEO; however the level of fine is a policy matter.

DSO has suggested that TEO engages with DoJ again to try to agree that the offence can be tried either way and to impose a larger fine on summary conviction at whatever level it considers appropriate.

There does not seem to be any provision enabling a larger fine to be imposed in relation to an offence which is tried summarily only which is why I had queried the fine of £10k in relation to an offence under the regulations made by DoH. It might be that the intention was that this offence was also triable either way but my reading of the draft provisions is that it was intended to be summary only.

The lawyer in Scotland has confirmed that their intention is to provide for the offence to be tried on indictment in order to enable an unlimited fine to be imposed. The TEO suggested approach would accord with this and would mean that NI would have the same maximum penalty for the offence as the other UK jurisdictions.

I would be grateful if you would give this matter your consideration and advise accordingly'.

In summary, DSO folks [NR] and [NR] have undertaken extensive work on this with [NR] this week.

[NR] has been linked into calls and engaged with lawyers from other regions. [NR] and [NR] have all of the details on this and may need to seek direction on these final points.

Happy to discuss if there is anything further that I can do.

Bernie