

OFFICIAL

Mindful of the extraordinary nature of the powers conferred on the police by the Coronavirus Act 2020 and the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations, Police Scotland and the Scottish Police Authority agreed that it was appropriate to establish an Independent Advisory Group in order to reassure the public that the temporary powers of enforcement were being used appropriately, and only as a last resort.

The Terms of Reference for the Group are:

1. To ensure that use of powers by Police Scotland is compliant - both in application and spirit – with:
 - (a) human rights principles and legal obligations, including those set out in the Human Rights Act 1998 and the Scotland Act 1998
 - (b) the values of Police Scotland – integrity, fairness and respect - and its 'safety and wellbeing' remit as laid out in the Police and Fire Reform Act (Scotland) 2012, and
 - (c) the purpose of the 2020 Act and Regulations, namely safeguarding public health.
2. The powers which will be considered by the Group include the powers:
 - (a) relating to potentially infectious persons under section 51 of the Coronavirus Act 2020 and schedule 21 to the Act;
 - (b) to issue directions relating to events, gatherings and premises under section 52 of the Coronavirus Act 2020 and schedule 22 to the Act; and
 - (c) to enforce requirements to close premises and businesses and restrictions on movement and gatherings, all under Part 4 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.
3. The following are not within the scope of this review:
 - (a) the terms of the Lord Advocate’s guidelines on the investigation and prosecution of crime, including liberation from custody and the reporting of offences;
 - (b) compliance by police officers with the Lord Advocate’s guidelines on the investigation and prosecution of crime, including liberation from custody and the reporting of offences; and
 - (c) any specific case in which the police have taken action in respect of criminal offences under the Act and regulations.
4. To seek and take account of the views of police officers and members of the public in relation to the scope, clarity and use of the powers during the crisis period.

5. To pay particular attention to any use of powers involving children, young people, or persons within disadvantaged communities including those with protected characteristics under the Equality Act 2010, to ensure that they are fully reflective of Police Scotland's duties.
6. To report to the Scottish Police Authority, as regularly and within structures as agreed to be appropriate, on Police Scotland's use of these powers, and associated public communication and community engagement.
7. To assess, and highlight as appropriate, any gap in powers between the role of Police Scotland in responding to the pandemic and the statutory framework in which they operate.
8. To assess and comment on Police Scotland's process for managing and updating their Community Impact Assessment, Equality and Human Rights Impact Assessment and Child Rights and Wellbeing Impact Assessment in the context of the Coronavirus Crisis.