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INDEPENDENT ADVISORY GROUP

on Police Use of Temporary Powers Relating to the Coronavirus Crisis

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David Crichton,
Vice Chair
Scottish Police Authority
1 Pacific Quay,
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13 July 2020

Dear David,

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 7) Regulations 2020

I refer to the above regulations which were published on Thursday 9 July, laid before the Scottish Parliament the same day at 3.30 pm and came into force on Friday 10 July.

As a group, we thought it appropriate to write to you regarding experience of the policing of the pandemic to date and how lessons from this may assist in informing the approach to the new restrictions, in particular the wearing of face coverings in shops (regulation 6B). We also think that the new regulations may impact on policing due to an increase in reports from shops or the public about people suspected to be in breach of the new regulations.

It might be that related discussions with the Scottish Government and others would be useful, if they have not already taken place.

The frontline of today's new restrictions will be "shops" meaning buildings, rooms or other indoor establishments used for the retail sale or hire of goods or services (regulation 6B(4)). Those dealing with the public on the frontline are likely, in the first instance, to be shop staff, including security staff.

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It is crucial that those on the frontline have an awareness of the many good reasons why someone may not be wearing a face covering. The Scottish Government website offers some examples:

You may also have a reasonable excuse not to wear a face covering if, for example:

- *you have a health condition or you are disabled and a face covering would be inappropriate because it would cause difficulty, pain or severe distress or anxiety or because you cannot apply a covering and wear it in the proper manner safely and consistently. Individual discretion should be applied in considering the use of face coverings for other children including, for example, children with breathing difficulties and disabled children who would struggle to wear a face covering*
- *you need to eat or drink*
- *you are taking medication*
- *you are communicating with someone else who relies on lip reading*
- *a relevant person, such as a police officer, asks you to remove your face covering*

The list is illustrative, not exhaustive, and the amended regulations themselves offer a longer list of examples of reasonable excuses – see regulation 8(5A):

In relation to the wearing of a face covering, a reasonable excuse includes—

- (a) to seek medical assistance,*
- (b) to provide care or assistance to a vulnerable person, including to provide emergency assistance,*
- (c) to avoid injury, illness or to escape a risk of harm,*
- (d) where the person cannot put on, wear or remove a face covering—*
 - (i) because of any physical or mental illness or impairment or disability (within the meaning of section 6 of the Equality Act 2010),*
 - (ii) without severe distress,*
- (e) to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise),*

(f) to eat or drink where reasonably necessary,

(g) to take medication,

(h) to remove a face covering temporarily to comply with a request by a relevant person or another person acting in the course of their duties, and for the purposes of this sub-paragraph "relevant person" has the meaning given by regulation 7(12).

While face coverings need not be masks, masks remain the most obvious example. It should be recognised that standard face masks are designed for the average adult male face. This means that women, people of smaller build, children and young people will generally find it harder to find masks that fit comfortably. People might remove them because they are uncomfortable or they keep falling off. Getting properly fitting masks can be expensive.

It may be helpful to disseminate to shops guidance on how to deal with members of the public in line with the approach taken thus far by Police Scotland in relation to all restrictions, namely the 4 E's approach – engage, explain, encourage and enforce. Obviously the fourth E – enforcement – is not available to shop staff. In any event, it is used only sparingly by officers of Police Scotland. The majority of encounters with the public when there are questions around compliance with, for example, restrictions on gatherings, are resolved by way of the first E - engagement.

It may be that some of the material disseminated to police officers could be adapted to assist shop staff, with guidance that, where necessary, they should engage with the public in a friendly manner even if it appears that an individual is failing to comply with the regulations. This is so for a number of reasons.

Firstly, some of the reasons that people may have for not wearing face coverings, sufficient to amount to a reasonable excuse, will relate to hidden disabilities or the like. Demanding to know such reasons in public places, often with other people around, would be inappropriate as it may be intrusive and intimidating. It should be noted that such issues may also be relevant to shop staff. We heard recently of an autistic person who was due to return to work in a shop and was worried, because she feels unable to wear a mask, about the reaction of her employer and other members of the public. Being challenged, or the fear of being challenged, may also be intimidating for some people.

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Secondly, as we have been moving largely towards easing of restrictions and the media continues to report on the differentiated easing in other parts of the UK, there remains a great deal of uncertainty on the part of the public as to which restrictions apply now. Honest mistakes are easy to make.

Thirdly, it is to be hoped that the new restrictions do not start to reverse the recent move away from police officers as the first response to issues around adherence to the remaining public health restrictions. As you know, “normal” policing demands have been returning to normal levels and the capacity of Police Scotland to attend shops throughout the country to ask people to put on face coverings is simply not there.

Fourthly, if the police are called to attend a shop because of a possible breach of regulation 6B, it is almost certain that, in most cases, they will continue to use the 4 E’s approach. This will mean, of course, starting by engaging with the individual, checking if they are ok, explaining the law if necessary and encouraging the person to wear a face covering if that is possible and appropriate for that individual. Only as a last resort, perhaps if coupled with other criminal behaviour like breach of the peace, would enforcement be used.

It may be that the Scottish Government and other relevant bodies have already made necessary preparations along the lines we have suggested. We hope so, although the speed with which the regulations have been brought into force may not have allowed time for this.

In conclusion, in addition to maintaining the strong and clear message about compliance with public health restrictions being for the good of all, it might be helpful to ensure that there is wider awareness – on the part of the public as well as shop staff - of the many good but hidden reasons why someone may be unable to wear a face covering. Perhaps signs should be posted around shops to point out that such reasons exist and people should start by assuming the best, rather than the worst, of others. Having clear signage in shops, highlighting the need for the use of face coverings *if possible*, might allow staff to check on the public’s awareness in a more sensitive manner than more direct and intrusive inquiry.

Yours sincerely

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