

INDEPENDENT ADVISORY GROUP ON POLICE USE OF TEMPORARY POWERS RELATED TO THE CORONAVIRUS CRISIS

On 25 March 2020, the UK Parliament passed the Coronavirus Act 2020 in a single day, with Royal Assent received the same day. On 27 March, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations (‘the Regulations’) were laid before the Scottish Parliament and came into force the same day.

Both enactments formed part of the response of government to the Coronavirus Crisis, a national public health emergency of unprecedented scale, with the Regulations explicitly designed “for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland (whether from risks originating there or elsewhere).”

The overall response by government included a national “lockdown” imposed with effect from 23 March 2020 and clear advice to stay at home to avoid transmission of the disease, thereby saving lives and seeking to ensure that the NHS remains able to cope with the additional demand. The advice to stay at home was incorporated into a legislative requirement with exceptions allowed only if there was a “reasonable excuse”. The Regulations give some examples of reasonable excuses but experience has suggested others, for example, due to the additional needs of specific individuals, such as those with learning disabilities or autism or those requiring to leave their residence due to domestic or sexual abuse. Appropriate refinement of approach in the light of experience is an obvious result of the speed with which these measures had to be introduced.

While the public have been expected to comply with the law and related guidance for the sake of public health – and the vast majority of people have done so, providing practical emphasis of the concept of policing by consent – it was apparent that powers of enforcement would be necessary as a last resort for flagrant breaches of the law. Police Scotland have emphasised that officers should engage with members of the public in the first instance, explaining the legal requirements and encouraging compliance where necessary. This approach is usually sufficient to secure compliance, again offering practical emphasis of policing by consent.

As a public health issue, firmly within Police Scotland’s main statutory purpose - to improve the safety and wellbeing of people, places and communities in Scotland - enforcement is intended as a backstop, to be used only when all else has failed. Use of the powers may give an impression of a public order

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initiative, but the context is crucial - police officers on the front-line of an essential public health response. Nonetheless, it is recognised that the two enactments gave extraordinary powers of enforcement to Police Scotland to allow police officers to ensure compliance with temporary restrictions on the freedom of the population.

Mindful of the extraordinary nature of the powers, Police Scotland and the Scottish Police Authority agreed that it was appropriate to establish additional measures for scrutiny of this “public health policing”, involving all aspects of engagement with the public, but also including the use of the powers. This would serve to reassure the public that the temporary powers of enforcement were being used appropriately, and only as a last resort. It would also provide a forum for exchange of information and views between the police and public to deal with the sort of mistakes and misunderstandings – on the part of the public and the police - that are inevitable in a situation where significant new powers are introduced as a matter of urgency and without the opportunity for training, dissemination and communication which would be necessary in normal circumstances.

After consultation, it was decided that such scrutiny could be undertaken by an Independent Advisory Group. A similar model was used in 2015 to look at the use by Police Scotland of the tactic of “stop and search”. The Independent Advisory Group (“IAG”) on Stop and Search was chaired by John Scott QC Solicitor Advocate who was asked, and agreed, to chair the new Group.

Mindful of the relevant statutory and other responsibilities in relation to policing, it was agreed that it would be appropriate to have certain key organisations represented on the Group – Police Scotland, the Scottish Police Authority, Her Majesty’s Inspectorate of Constabulary in Scotland and the Crown Office and Procurator Fiscal Service. Equally importantly, key human rights scrutiny bodies and organisations agreed to provide members for the Group. Importantly, the third sector is also represented.

Full membership of the Group, which may change over time, can be seen at <https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/membership/>

The Group will also seek to involve the voices of community and grassroots representatives, advocates and activists, including those which deal with issues of equality, race, domestic and sexual violence, young persons, refugee and asylum matters, the Roma community, autism, disability, older people and any other groups that may be impacted the use of such powers.

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The Group will meet, by suitable electronic means, as and when required during the Crisis. It is intended that the review will be dynamic and able to provide assistance and guidance on matters as, or shortly after, they arise. The Group will consider data and other information about engagement and enforcement, and may make recommendations to the Scottish Police Authority about aspects of implementation or communication, always recognising the need for operational independence on the part of the Chief Constable and the independent role, and responsibilities, of the Lord Advocate and the Procurator Fiscal in relation to policing in Scotland and the investigation and prosecution of crime. When the Crisis is over, the Group may make recommendations arising from its work during the Crisis.

Members of the Group remain free to express views which differ from any conclusions reached by the Group and are free to adopt a position which differs from that of the Group and to contribute to wider debate. For the avoidance of doubt, participation in the work of the Group is without prejudice to the statutory independence of the National Human Rights Institutions and their compliance with the requirements of the Paris Principles¹, as well as the independence and statutory responsibilities of any other bodies from which Group members have been drawn.

¹A comprehensive series of recommendations on the role, composition, status and also functions of [National Human Rights Institutions](https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx) - <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>