

Meeting	Authority Meeting
Date	30 September 2020
Location	Video Conference
Title of Paper	Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis
Presented By	John Scott QC, Solicitor Advocate
Recommendation to Members	For discussion
Appendix Attached	Appendix A, Appendix B

PURPOSE

To provide the fourth interim report to the Scottish Police Authority on the work of the Independent Advisory Group on Police Use of Temporary Powers Related to the Coronavirus Crisis.

The paper is submitted for discussion.

To the Board of the Scottish Police Authority
For the Meeting of 30 September 2020

Fourth Interim Report of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis

Chair's Introduction

This report is to update the Board of the Scottish Police Authority (SPA) with a summary of our work since our third interim report dated 17 August 2020. It will be briefer than earlier reports, in particular due to ongoing work on additional data analysis which it has not been possible to complete.

Analysis of relevant nominal data relating to fixed penalty notices (FPNs) for the period from 27 March to 31 May is underway and we hope to include analysis of this and linked data from the Scottish Courts and Tribunal Service ("SCTS") in our report for the SPA Board meeting on 25 November. The SCTS data cannot be made public until November, although SCTS staff are assisting us with early access to the data through necessary data-sharing agreements. With the assistance of Police Scotland's OpTICAL Group¹, we should be able to link the police and court data for a fuller picture of enforcement; for example, what proportion of FPNs were rescinded or not otherwise proceeded with, and the payment outcomes of FPNs during this initial lockdown period.

Last week (commencing Monday 21 September) saw the most significant nationwide tightening of restrictions since we started moving through the phases of easing in the Scottish Government's Routemap through and out of the Coronavirus Crisis². The new restrictions announced by the First Minister on 22 September, introduced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Amendment Regulations 2020, came into force on 25 September (the new regulations were published only after 1000 hours on 25 September, that is *after* they had come into force). The key restrictions relate to a general prohibition (with exceptions) on indoor gatherings and curfews for pubs and restaurants, as well as a requirement for takeaway or table service. As in the earlier stages of

¹ For more information about OpTICAL, see our second interim report – <https://www.spa.police.uk/spa-media/5erhkjeb/rep-b-20200629-item-5-iag-report.pdf>
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² <https://www.gov.scot/collections/coronavirus-covid-19-scotlands-route-map/>

lockdown, new Government guidance goes further than the regulations, for example, asking that people avoid car-sharing. We have commented previously on what we see as welcome legislative restraint so that not every breach of guidance is a criminal offence.

As this report was being finalised, there was considerable publicity, confusion and concern about proposed restrictions on students. This will be addressed later in the report in the section on children and young people. It provides a very recent example of the need for clear and effective communication.

A particular feature of the last few weeks has been the increase in voices - medical³, scientific⁴, political⁵, legal⁶ and others - speaking out against some or all aspects of existing and proposed restrictions. Of course, we live in times when even people without formal qualifications, knowledge or experience consider themselves experts in epidemiology, behavioural psychology, constitutional law and international trade. There is now no shortage of “experts”.

While the apparently small number, experts and others, expressing such views may be increasing, there appear to be many more in the same disciplines who either support existing and proposed measures, or even believe that more restrictions are necessary.

The growing noise from, and attention to, extreme libertarian views resonates with some members of the public who are, understandably, fed up, or unable to cope any longer, with life under restrictions. While there is scope for good faith disagreement among experts, the more extreme arguments of some who should know better are available as a potential legitimisation for what is often, in fact, wilful but uninformed refusal to accept that risk cannot be safely accepted only by and for a single individual.

On the other hand, there are legitimate concerns being more widely expressed about an absence of transparency and scrutiny of increasing

³ <https://oicanadian.com/doctor-uses-misleading-data-when-suggesting-conspiracy-on-covid-19/>

⁴ <https://www.aier.org/article/lockdowns-are-cruel-and-regressive-says-oxford-universitys-professor-sunetra-gupta/>

⁵ <https://www.the-gazette.co.uk/news/national-news/18751615.mps-must-share-decision-making-burden-draconian-coronavirus-laws---tory-rebel/>

⁶ <https://www.lbc.co.uk/news/uk/lord-sumption-rule-of-six-unenforceable-social-gatherings-fines/>

restrictions. All of this complicates the role of Police Scotland who still rely on the central principle of policing by consent.

Policing by consent continues in Scotland but it cannot be taken for granted - decisions by government and heated public discourse can affect it adversely in some groups and with some individuals.

5 October Public Event – IAG and SPA Board

In our last report, I said that I was in ongoing discussions with SPA Board Interim Chair, David Crichton, about arranging another public event involving the SPA Board and the IAG, like the one held on 30 July. The next such event will take place on [5 October at 1400 hours](#).

As before, this will allow an additional opportunity to discuss our work with Board members in a public forum. This is, of course, important as it offers another opportunity to provide assurance to the public about the use by Police Scotland of the emergency powers.

The event will be chaired once more by Dr Liz Aston of the Scottish Institute for Policing Research.

Inequality and Support

*...our judgment at this stage - particularly given the spirit of solidarity that is so essential in this fight against COVID - is that supporting people to do the right thing is much more effective than threatening harsh punishment if they can't.*⁷ (First Minister, Statement to the Scottish Parliament, 22 September 2020)

As stated in our last report, it is clear that the Scottish Government recognises that, while it must be one option, enforcement is generally not the right starting-point when it comes to the many restrictions which have been introduced at various points over the last six months to address this public health crisis. This recognition can be contrasted with the approach of the UK Government which has increased the maximum level of fines and, albeit in an often contradictory manner⁸, talked up the option of “snitching” on others and greater enforcement in all aspects of

⁷ <https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-22-september-2020/>

⁸ <https://metro.co.uk/2020/09/20/matt-hancock-said-he-would-snitch-on-his-own-neighbour-for-not-self-isolating-13298144/>

restrictions, from the wearing of face coverings to observing quarantine. There has even been mention of using the army⁹ to support certain policing roles in addition to Covid marshalls¹⁰.

People living in poverty or other deprivation or difficulty are already struggling – with bereavement, health issues (physical and mental), but also hunger and, as winter approaches, worrying about other essentials like heating. Some of them have struggled also with coronavirus restrictions because of their circumstances. Faced with these problems, especially at this time of year, as well as six more months of restrictions, increasing the level of fines looks like compounding an impossible situation. For some, a fine of £100 is just as unrealistic as a £10,000 fine. The importance of adherence does not make adherence any easier.

Recently published UK-wide research¹¹ commissioned by the Department of Health, looking at adherence to the test, trace and isolate systems supported this, reporting:

Our results suggest that financial constraints and caring responsibilities impeded adherence to self-isolation, intending to share details of close contacts, and quarantining of contacts. The disproportionate impact of the pandemic on people from lower socio-economic backgrounds and with caring responsibilities has been well-documented. Previous research has shown that people who have received help from others outside their household because of COVID-19 were more likely to adhere to self-isolation. To encourage adherence, policies must ensure that people are adequately reimbursed for any potential losses that may arise from needing to self-isolate and facilitate practical considerations, such as shopping for groceries and medicines during self-isolation.

Wilful breaches of restrictions occur but so too do breaches through impossible circumstances, for example, ignoring quarantine to earn money rather than starve. In line with the message from the Scottish Government, support should be increased before penalties.

⁹ <https://news.sky.com/story/coronavirus-pm-urged-to-explain-plans-for-military-to-support-police-as-new-restrictions-announced-12079084>

¹⁰ <https://www.bbc.co.uk/news/explainers-54105672>

¹¹ Adherence to the test, trace and isolate system: results from a time series of 21 nationally representative surveys in the UK (the COVID-19 Rapid Survey of Adherence to Interventions and Responses [CORSAIR] study): <https://www.medrxiv.org/content/10.1101/2020.09.15.20191957v1.full.pdf>

I mentioned in earlier reports the work of the Joint Committee on Human Rights (JCHR) at Westminster. Its report, *The Government's response to COVID-19: human rights implications*¹², was published on 21 September. It is quoted throughout this report where relevant. In relation to the issues described in the addendum to our last report, the JCHR report states:

228. The use of emergency procedures for passing laws should be exceptional, limited to situations where the nature of the emergency itself requires the use of emergency procedures, and should require explicit justification, especially when human rights are at stake. The Government must consider whether a better balance could be struck between the flexibility of urgent legislation and the need for scrutiny by Parliament when legislating to respond to a public health crisis such as this.

To this we would add that, whether beforehand (if possible) or shortly afterwards, Equality and Human Rights Impact Assessments should be produced for all legislative change. This is of importance for purposes of transparency and scrutiny as well as for Police Scotland who require to satisfy themselves by way of their own Impact assessments - Community Impact Assessment, Equality and Human Rights Impact Assessment and, when they are finalised, Child Rights and Wellbeing Impact Assessment. These are issues not only in Scotland but in countries across the world.

If, as seems likely, we have to live with varying degrees of restriction for a considerable further period of time, the government requires to do what it can to carry the confidence, trust and consent of the public as this will inform the response of the public to whatever aspects of restrictions are left for the police to enforce. Greater transparency, scrutiny and trust will help with adherence. Public knowledge and understanding are likely to go much further than fear of enforcement.

On this point, the research¹³ commissioned by the Department of health says:

In terms of capability, it appears that higher knowledge in general was associated with greater uptake of protective behaviours. It is impossible to disentangle causality here. People who are better

¹² <https://committees.parliament.uk/committee/93/human-rights-joint-committee/publications/>

¹³ <https://www.medrxiv.org/content/10.1101/2020.09.15.20191957v1.full.pdf>

informed may simply be more engaged generally in attempting to understand and tackle the pandemic, with the latter promoting adherence. Nevertheless, disseminating clear and easily understood information about the virus and how it spreads is likely to increase adherence to protective behaviours, especially where understanding is low.

Clear communications around the continuing common threat can sustain the majority of the public in a common purpose and encourage adherence to guidance and avoid breaches of regulations.

No democracy will be able to enforce its way through the pandemic. Instead, government should continue to use, perhaps even formally adopt, the first three of the 4 Es – engage, explain and encourage – in all of its communications with the public. In turn, this should assist the public and police in their partnership for public safety and wellbeing.

Appendix

Our report is accompanied by the following document as an appendix:

1. Article 11 of the ECHR: right to freedom of peaceful assembly – Diego Quiroz (August 2020)

Weekly, often daily, liaison continues with the tireless SPA staff who provide our secretariat (in addition to attending to their own duties) - Eleanor Gaw, Fiona Miller, Jennifer Blackwood and John McCroskie. David Crichton, Interim Chair of the SPA Board, continues to offer continuing support and welcome advice. We could not do our work without them.

John Scott QC Solicitor Advocate
28 September 2020

Compliance, Enforcement and Data: Exercise of the Powers – Fixed Penalty Notices

Police Scotland continue to publish enforcement data¹⁴ and numbers remain low. For example, since our last interim report on 17 August, there have been only 87 recorded FPNs and 27 recorded arrests relating to the use of the temporary powers.

For illustration of the most recent data from Police Scotland, we include the enforcement table for the week ending 23 September (the actual numbers may be slightly higher than shown¹⁵).

Division	Dispersed when informed	Dispersed but only when instructed:	Dispersed using reasonable force	Issued an FPN	Arrested
A	1673	534	23	170	14
D	2168	505	17	116	11
N	2758	439	5	153	22
C	4941	1227	69	267	15
E	4490	782	70	192	22
J	1805	410	27	145	9
P	3659	430	36	223	56
G	17911	5201	122	862	68
L	6137	1324	24	344	9
K	3107	1077	12	323	21
Q	3099	765	29	433	42
U	2853	1061	32	161	15
V	905	267	3	58	10
Total	55506	14022	469	3447	314
Total number of FPNs issued over the last 7 days - 44					
Total number of Arrests over the last 7 days – 12					

¹⁴ <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>

¹⁵ The CVI System was introduced on 06/04/2020, and as result, data is only available at a sub-divisional level from this date onwards.

In response to the introduction of The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 and Coronavirus Act 2020, Police Scotland developed a 'Coronavirus Interventions' (CVI) recording system. This system allowed Police Scotland to begin gathering data in relation to the public co-operation levels with the new legislation. This system relies on Police Officers manually updating the system with the co-operation level they experienced when they encounter an individual in contravention of the new legislation.

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On 28 September, a statement ¹⁶appeared on the Police Scotland website. Quoting the Chief Constable, it said:

“I am grateful for the support and co-operation of the public and the licensed trade which continued over the weekend. I also want to again underline my admiration and compassion for young people and students who have responded so well to the pandemic at this crucial time of their lives.”

It continued:

The Chief Constable reiterated his concern about house parties after initial reports indicated officers responded to at least 300 across Scotland between Friday and Sunday morning. Officers issued at least 101 fixed penalties and made 14 arrests while responding to complaints of house parties during the same period. Entry to households was forced on three occasions across Scotland. Analysis suggests house parties are being held across the country in every community and age group.

It should be noted that, although the 4 Es remain central to the response of Police Scotland, quicker acceleration through the Es may occur, and be justified, where the breach is flagrant, for example, enforcement may be likelier where a breach is repeated or where an indoor gathering breaches the rule against parties (regulation 10, Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 - 16 or more people) as opposed to other gatherings (regulation 9, Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 - seven or more people).

Significantly, until 23 September, officers of Police Scotland used the power of entry associated with gatherings of 16 or more people (available for use since 27 August) only once. The power of entry associated with gatherings of 6 or more (available since 14 September but only with the consent of the owner or with a warrant) has not been used. It appears that slightly greater use of the power had occurred over the weekend.

Looked at overall, this still suggests proper respect for the requirements of necessity and proportionality.

¹⁶ <https://www.scotland.police.uk/what-s-happening/news/2020/september/concern-over-house-parties-continues-but-vast-majority-co-operate-with-restrictions/>

It should be noted that the majority of gatherings and parties are not recorded as having involved students. While the picture may change in light of events of the last few days, the police data does not support what has been, in some quarters, a demonisation of young people.

Police Scotland's OpTICAL group has continued to provide support to the work of the IAG, meeting weekly and responding to requests for data from the IAG¹⁷. We are grateful to ACC Gary Ritchie who chairs that group, and his colleagues who respond to our data requests. All of them do this important work in addition to undertaking their daily duties.

Public attitudes

The constant depiction in the media of breaches or apparent breaches of guidelines and regulations undoubtedly plays a part in public attitudes. The various means of testing public attitudes, including our public portal, indicate no substantial change in support for the approach of Police Scotland to policing the pandemic.

There continue to be responses and some other evidence¹⁸ of a desire for greater enforcement. Divisional Commanders who have spoken to us have mentioned increasing demands from local elected representatives to use powers of enforcement more often.

No doubt informed by the duration and impact of restrictions so far and some recent debate about the need for restrictions of any sort, there are also increasing numbers who want fewer (or no) restrictions and less enforcement. In terms of public support and confidence, this necessitates a balance in how discretion is exercised.

Communications - General

In general, it appears to us that communications in Scotland have remained clear and consistent, from Police Scotland, the Scottish Government, and the First Minister. This appears true of internal as well as external communications from Police Scotland. For instance, the most recently issued guidance from Operation Talla Gold Commander DCC Malcolm Graham to officers maintains clear and consistent advice

¹⁷ For more information about OpTICAL, see our second interim report – <https://www.spa.police.uk/spa-media/5erhkjeb/rep-b-20200629-item-5-iag-report.pdf>
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¹⁸ <https://www.scottishparliament.tv/meeting/first-ministers-questions-september-2-2020>

to use engagement, explanation and encouragement with those found to be in breach of the Regulations, resorting to enforcement only to deal with the most blatant breaches or repeat occurrences.

Some confusion is perhaps inevitable, however, when the divergence in restrictions in different parts of the UK increase, for example, in relation to the “rule of 6” which was referred to in the same way in Scotland and England although it involved different restrictions in each country.

The situation with restrictions on students, the subject of significant publicity and messaging on and after 24 September, appears to be an example of poor and confusing communication. Urgency is no excuse for confusion when effective communication and understanding of restrictions are key underpinnings for adherence. The JCHR report stated:

*57. It is in the nature of a pandemic that outbreaks need to be contained quickly and emergency regulations are the inevitable result. **Nonetheless, it is imperative that Government provide sufficient warning of changes to the law, and coordinate with appropriate bodies, so that police forces and bodies such as the NPCC and CoP have time to understand and explain those changes.***

The same is true in Scotland, both for Police Scotland and the public. For example, publication of regulations should occur in advance, preferably well in advance, and certainly not after implementation as occurred last Friday.

The JCHR report commented more generally on communications:

42. There is a requirement under Article 7 ECHR, reflected in the common law principle of legality that a criminal offence must be both foreseeable and accessible, meaning an individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts’ interpretation of it, what acts and omissions will make him or her liable. It is therefore essential that criminal offences are (a) clear in their wording and (b) clearly and consistently communicated so that citizens can understand what behaviour puts them at risk of criminal sanctions. Importantly, any enforcement guidance should only reflect what is provided for in the law—it should not seek to

expand upon what is unlawful beyond what is unlawful on the face of the law.

43. The communication challenge is particularly acute where laws are wide-ranging, introduced at the same time as they come into force, change substantively every few weeks and can be overlaid by stricter local restrictions. Although we recognise the challenge involved in responding to Covid-19, we believe the government could have done much better in this regard.

44. Each set of regulations has been accompanied by government 'guidance' which has been published online. This has been supplemented, and sometimes preceded, by ministerial statements and interviews. The communications of the guidance and laws has at times been confusing leading to widespread misunderstanding as to what people are and are not permitted to do. There have been a number of causes of this, including (i) guidance usually being stricter than restrictions imposed by accompanying legal regulations, (ii) regulations being made and published a substantial time after a new lockdown had been announced, (iii) regulations being widely and often ambiguously worded and (iv) ministers not being clear as to whether they were stating activities were illegal or simply advising against them.

While this report referred to communications from the UK Government, it is relevant to similar communications in Scotland.

The various live versions of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations were consolidated in the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. These were brought into force on 14 September 2020. In addition to consolidating the restrictions which were still thought necessary, these were the regulations which introduced "the rule of 6", meaning a ban on indoor gatherings of more than 6 people from more than 2 households, not including (in Scotland) children under 12 in the total of 6. The introduction of these regulations created a degree of confusion as to the permitted exceptions, no doubt exacerbated by the different requirements in the English version of the law.

Communications – guidance/regulations

There continues to be a difference between regulations and guidance. This is the case also in England. The JCHR report stated:

45. The Prime Minister's statement of 23 March 2020 referred only to four "very limited purposes" which were stated to be "the only reasons you should leave your home". Those reasons were later expanded upon on the gov.uk website by a number of 'frequently asked questions'. However, the regulations which came into force three days later provided a list of "reasonable excuses" for which people were legally permitted to leave the house. Not only was this list non-exhaustive, but it also included reasons which were not mentioned in the Government guidance, such as to access social services, for children of two parents who live apart to travel between homes and to fulfil a legal obligation.

46. The Government guidance and regulations underpinning it have often been different in material respects. One key example were the rules on how often individuals could take exercise outside of their homes. This was an important question for tens of millions of people. The guidance stated that "you can [...] still go outside once a day for a walk, run, cycle" (original emphasis in guidance) and "you can still go to the park for outdoor exercise once a day". The regulations for England (as well as Northern Ireland and Scotland) allowed for a person to leave the house for a "reasonable excuse", which explicitly includes for taking exercise with no limit on the number of times a person can take exercise. The guidance issued in May, after the lockdown rules were amended, referred to being able to "exercise outdoors as often as you wish" as something which people could do but could not before, although there was never a legal prohibition in England against exercising more than once per day.

It appears to us that, while this distinction and related messaging have been a source of some confusion, there are advantages in maintaining it. It allows more space for good faith mistakes and confusion before enforcement is possible, as well as involving only the first three of Police Scotland's 4 Es approach to members of the public who may be in breach only of the guidance – engage, explain and encourage. The fourth E, enforcement, is reserved for flagrant or repeated breaches of regulations and that approach seems to us to have worked well.

Despite our support for maintaining a distinction with a view to allowing space for good faith mistakes, the distinction between guidance and regulations has been a source of confusion in relation to what is

expected of students. Much of what they were being told seems to have proceeded on the basis that guidance was a regulatory requirement. Further confusion seems to have been caused by a blurring of the distinction between guidance, criminal law and university rules. Government and universities should have been much clearer in communications, explanation and support for young people and their families as opposed to causing confusion and worry.

“Normal” policing - Transitions

What we described as Police Scotland continuing “to move out of the spotlight as regards policing the pandemic” is a process which has slowed, given the number of local lockdowns and increasing restrictions. Non-coronavirus policing demands have continued and even increased, however, meaning that pressure has increased on prioritisation within Police Scotland. The significance of the pandemic does not allow other essential police work to be ignored. This has inevitable resource implications in terms of personnel and money.

Local authorities and others have had to play an important part in “policing” residual and new restrictions, with Police Scotland’s role in enforcement more of a backstop in some areas.

Face coverings

General impressions remain of high levels of adherence to this regulation and little additional work for Police Scotland, albeit with increasing complaints about non-adherence.

“Local lockdowns”

Since our last report, “local lockdowns” have been used in large parts of Scotland – initially Greater Glasgow, East Renfrewshire and West Dunbartonshire (from 1 September), extended to Renfrewshire and East Dunbartonshire (from 8 September).

By 8 September, the “local” restrictions affected over 1 million people in Scotland. Again, these lockdowns involved greater use of guidance than regulatory restrictions. The main regulatory change around the time of these lockdowns, in force from 27 August, was the ban on parties, defined as gatherings of 16 or more people¹⁹. This was explained as

¹⁹ Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (Number 13) Regulations

being directed towards what was thought to be the source of increased transmission of the virus in these areas and contrasts with the Aberdeen lockdown which was said to be associated with the night-time economy and therefore involved regulations aimed at pubs and restaurants with only guidance aimed at members of the public.

The Work of the IAG

Given the recent tightening of restrictions, we have decided to retain our schedule of weekly meetings. Work and regular contact continues between meetings, reflecting the dynamic nature of this review and allowing the Group to provide assistance and guidance on matters as, or shortly after, they arise in ever changing circumstances.

We have had further discussions with Divisional Commanders from different parts of the country, in addition to ongoing input from Police Scotland through DCC Kerr and some of his senior colleagues.

We continue to engage with relevant outside experts – see appendix B for details.

Work Programme

See appendix B for the detail. Notes of our meetings since our third interim report will be put on our page²⁰ on the SPA website after this report is published.

Public portal

The Citizen Space public portal went live on 1 June 2020. As at 18 September 2020, there have been 91 responses. It will remain live until the end of October.

- Of those who gave their personal details, respondents were equally split between male and female, but they were highly skewed towards higher age groups (only 15% were below age 35, and there were no respondents aged under 18).
- Only two respondents said that the Coronavirus had had no impact at all on their lives, whereas over half said it had had a high impact on their lives.

²⁰ <https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/iag-public-reports/>

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- People have consistently raised economic, social and mental health concerns as the main impacts (as before) but some of the newer responses have raised issues about the long term detrimental impact of shielding (in terms of loneliness and isolation), disruption to holiday plans and ability to visit family members, stress of working in the NHS, and the pains of recovering from covid or grieving a relative who has died.
- Nevertheless, people have taken time to highlight circumstances that have increased their resilience to the ill effects of lockdown and the pandemic, such as having a large enough house with a garden or outside space, living in a scenic rural area, being able to continue working (especially from home), not living alone (and having children back home with them) and having a supportive group of friends or community.
- Most people said they knew a fair amount (66%) or a lot (11%) about the new policing powers; although only 31 (34%) said that they (25), a family member (4) or someone else they knew well (8) had had direct police contact in relation to the Coronavirus regulations.
- Early respondents to the survey who had police contact mainly responded in terms of experiences they (or others) had had; whereas several later respondents reported having police contact in a professional capacity (e.g. as elected members dealing with complaints or representatives of organisations impacted by the pandemic).
- Of those who had had police contact for a Coronavirus related reason the majority said that the police demonstrated fairness (22/31), respect (24/30) and equality (23/31). Nobody mentioned the police actions being affected by any issues relating to protected characteristics.
- Two thirds of respondents said their opinion of the police had stayed the same since the start of lockdown. Of those whose opinion had changed, more people said it had improved (15) than got worse (11).
- General comments on the policing of the pandemic ranged from the positive (e.g. 'Under trying circumstances Police Scotland have been outstanding I feel') to the negative (e.g. 'The long term relationship between the community and the police has been tarnished').
- Comments on the police approach to the use of the powers also ranged from the supportive (e.g. I think the measures have been necessary and from what I can see have been exercised with responsibility and proportionality with the good of the whole

community uppermost.) to the critical (e.g. There seems to have been very little enforcement action. It's all about "engagement" which is a waste of time').

Impact on Disabled People

Reinforcing a point we made in our earlier reports, and emphasised in contributions from the Glasgow Disability Alliance and Scottish Women's Autism Network, the JCHR report stated:

52. It is important that there is clarity for the public in relation to any criminal laws, and particularly laws relating to the lockdown. Information must be accessible to disabled people, especially those with cognitive impairments.

Impact on children and young people

In recent weeks, there have been increasing suggestions in the media of young people's behaviour in some countries being responsible for outbreaks of the virus. These stories have increased greatly in the last week, with coverage of student parties and gatherings.

Our last report was submitted just after the start of the new school term. This report is submitted after university terms started.

As this report was being prepared, an announcement was made regarding students being banned from socialising²¹ (although it now says "Covid: Scottish university students told not to go to pubs", the first version of this story published on the BBC website on 24 September carried the headline "Covid: Scottish university students banned from going to pubs").

While the dust is still settling on this situation and some reassuring noises have been made by the Scottish Government and universities, what has been allowed to happen is highly unsatisfactory as well as, to an extent, avoidable. Clearer communications were needed, involving detailed information to allow informed decisions by students and their families before students went to student accommodation. As the role of the regulations, as opposed to guidance, seemed to relate mainly to

²¹ <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-54285720>

prohibitions on indoor gatherings, there should have been greater clarity about what constitutes a “household”.

The seemingly panicked response by government and universities involving “bans” and threats about students not being able to go home, now or potentially even at Christmas, have caused unnecessary worry for many.

The plight of students has evoked considerable sympathy from many although also antipathy from some.

The situation of students demands support and understanding, not enforcement and threat.

As before, only egregious or repeated breaches of regulations should see police intervention.

Conclusion

In terms of the primary role of the IAG in the Terms of Reference²², our work, synthesising data and other evidence, serves to confirm that use of powers by Police Scotland in general continues to be consistent - 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.

While the main work of our group was planned to end when the initial emergency powers lapsed, matters have changed in view of recently introduced restrictions. Accordingly, we will continue to meet weekly for at least the month of October and then produce a final report, offering as much by way of learning as we can from the first six months of the pandemic. It is hoped that this will be of assistance given the likely duration of restrictions for at least the next six months.

²² <https://www.spa.police.uk/spa-media/5gxhinni/tor-final-27-4-20.pdf>

Appendix A.

Paper for The Independent Advisory Group on Police Scotland's Use of Temporary Powers

Article 11 of the ECHR: right to freedom of peaceful assembly (for discussion)

Diego Quiroz

September 2020

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the National Human Rights Institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

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Introduction

1. This short insight paper will focus on Article 11 of the European Convention on Human Rights (ECHR). The right to freedom of peaceful assembly guarantees the capacity of all persons to join with others to collectively express, promote, pursue, and defend their interests. This right enables people to express their political opinions, join trade unions, engage in religious observances, engage in artistic pursuits and elect their representatives and hold them accountable. It is therefore a fundamental right that embodies the very idea of a democratic government, and historically used to recognise and realise a wide range of rights, including economic, social and cultural rights. Article 11 has become of particular importance to marginalised individuals and groups, including children or foreign nationals, as they are traditionally excluded from the right to vote and decision-making.

2. This paper builds and comes at a time when worldwide protests are increasing in size and scope. From global justice issues such as the Black Lives Matter movement and climate change to more localised issues such as the school children's response to the Scottish Qualification Authority's SQA results in Glasgow (and the corresponding in the rest of the UK), the right to peaceful assembly continues to be an important way to express disagreement with government action. The protection of opinions and the freedom to express them is one of the objectives of Article 11. Freedom to a peaceful assembly is interrelated and interdependent with a number of rights, including freedom of opinion and the right to express them (Article 10), freedom of religion (Article 9)

and the right to privacy (Article 8). Each of these ECHR rights are mirrored for children under the age of 18 in the UN Convention on the Rights of the Child as autonomous rights to freedoms of expression, (Article 13); thought, conscience and religion (Art 14); privacy (Article 16) and particularly association and peaceful assembly (Art 15).

3. The paper provides a general overview of Article 11, drawing on international standards and the ECHR. This paper intends to complement the inputs of Prof. Cliff Stott and Dr. Michael Rosie on the sociological aspects of Article 11 by providing guidance on the scope of the right, permissible restrictions and relevant legal obligations. The pandemic has created extraordinary challenges for all, including significant implications for our democratic freedoms. These freedoms include the right to respect for freedom of expression, the right to peaceful assembly and association, and freedom of thought, conscience and religion. These rights are not however *absolute* and human rights law recognises that restrictions upon the exercise of these rights may be deemed justified in particular situations. However, any interference with these rights must comply with a number of conditions if it is to be consistent with the rule of law and the ECHR. The interference must be:

- in accordance with the law
- in pursuance of a legitimate aim;
- temporary; and
- necessary in a democratic society.

Article 11 – text and meaning

Article 11 states:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

4. The first paragraph of Article 11 defines the right and type of assembly. As mentioned above, it is not only important to understand the content of the right in itself, but also the role it plays in guaranteeing the effective implementation of other human rights and democracy. Furthermore, the fulfilment of this right includes a positive duty to protect and enable peaceful protests. Genuine freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere. The police play a key role in guaranteeing this positive duty in enabling the peaceful conduct during a protests and the safety of all citizens and participants of it.

5. Article 11 covers both private meetings and meetings in public places, whether static or in the form of a procession. Restrictions in terms of the number of participants in assemblies can be accepted only if there is a clear connection with a legitimate ground, for example where public

safety considerations dictate a maximum crowd capacity or where public health considerations dictate physical distancing. The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly (within the limits established in paragraph 2 of Article 11). This does not mean the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property in order to protest.¹

Restrictions

6. The second paragraph provides the foundation for restrictions to the right, however such restrictions must be exercised in a way that is compatible with the ECHR. This means that to be lawful any restriction must be 'narrowly construed' and 'convincingly established'.² An interference with the right to freedom of peaceful assembly will constitute a breach of Article 11 unless it is:

- Prescribed by law, which requires both that the measure should have a *legal basis* in domestic law, and sufficient quality of the law to be *accessible* to the person concerned and *foreseeable* as to its effects. This has clear implications for the public.
- Pursue a legitimate aim. The requirement of a narrow interpretation of the exceptions to the right to freedom of assembly

¹ Appleby and Others v. the United Kingdom. Application no. 44306/98.

² See for example, Sunday Times v UK (No 2) [1992] 14 EHRR 229.

applies also to the legitimate aims enumerated in *paragraph 2* of Article 11, which includes the *protection of health*. Restrictions in terms of the number of participants in assemblies can be accepted only if there is a clear connection with a legitimate ground, for example where public safety considerations dictate a maximum crowd capacity or where public health considerations dictate physical distancing.

- Necessary in a democratic society. This notion includes two conditions: a) any interference must correspond to a “pressing social need” in other words there are *relevant and sufficient* reasons for the restriction, and b) the interference must be *proportionate* to the legitimate aim pursued.

7. The UN [Special Rapporteur](#) on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule, has made clear that states’ responses to Covid-19 should not halt freedoms of assembly and association more than required.³ This requirement responds to paragraph 2 of Article 11. Restrictions based on public health concerns may be justified only in circumstances where they fulfil paragraph 2 of Article 11, for example restrictions are deemed necessary and proportionate. This means that the restriction must be the least restrictive interference required to meet the legitimate aim of protecting public health. Furthermore, consultation with civil society and other

³ “States responses to Covid 19 threat should not halt freedoms of assembly and association”, Geneva, April 14, 2020.

actors will be valuable in the process of designing or reviewing appropriate measures of response which are the most proportionate, and therefore least restrictive of the right possible. Lawfulness also requires sufficient quality of the law to be accessible to the person concerned and foreseeable as to its effects. This is a crucial point as laws, regulations and guidance around Covid-19 are not subject to the ordinary parliamentary and external scrutiny, which often means that it could be unclear or ambiguous. This gets worse when legislation is not accompanied by proper and timely widespread dissemination of the new laws. Mr. Voule has also emphasised the need to ensure that the penalties imposed, if justified, are proportionate and non-discriminatory. It is also important to provide for effective and accessible mechanisms to review such penalties.

Children and Young People

8. In engaging with the Scottish Government, the [Children and Young People's Commissioner Scotland](#) has supported a human rights-based approach in highlighting the requirements of the UNCRC and that children who are engaging in protests must not be unfairly penalised by schools. The UN Committee on the Rights of the Child has stressed a number of obligations on all states in this context, including: to facilitate protest; to protect the safety of children in this context; to educate officials on children's protest rights; to encourage children to form

associations, and to refrain from requiring children to seek parental consent to join those associations.⁴

Blanket Ban on Demonstrations

9. On April 15, the German Federal Constitutional Court (BVerfG) ruled, by means of an accelerated procedure, that the Giessen assembly authority had incorrectly assessed the ordinance of the Hessian government in relation to lockdown and freedom of assembly, after two lower courts upheld the ban on demonstrations. The Constitutional Court ruled that a general ban on demonstrations would be unconditional based on Article 8 of the Basic Law for the Federal Republic of Germany and ordered the Assembly to review their decision. One of the assemblies affected by the ban was carried out on April 17 in Gießen, but with conditions such as safe distancing and mouth protection.

Assembly which is not peaceful

10. Article 11 of the Convention only protects the right to “*peaceful*” assembly. This is key as the guarantee applies to *all* gatherings except those where the organisers and participants incite violence or otherwise reject the foundations of a democratic society. It is also important to note that an assembly tarnished with isolated acts of violence is not automatically considered non-peaceful so as to forfeit the protection of

⁴ For example in Concluding Observations: Myanmar, adopted 14 Mar. 2012, U.N. GAOR, Comm. on Rts. of the Child, 59th Sess., ¶ 47-48, U.N. Doc. CRC/C/MMR/CO/3-4 (2012).

Article 11. The European Court of Human Rights (ECtHR) has examined this issue in a 2015 case against Lithuania.⁵ The question whether an assembly as such was peaceful is distinct from the assessment of the applicant's conduct. This is an important consideration for the police and law enforcement agencies acting in Scotland. The ECtHR has found that obstructing traffic arteries and occupation of public buildings as part of a demonstration is conduct which is, by itself, considered peaceful.⁶ The UN Human Rights Committee has also found that collective civil disobedience or direct-action campaigns can be covered by Article 21 of the ICCPR (right to peaceful assembly), provided they are non-violent.

The links with other rights (Articles 9 and 10)

11. The protection of opinions and the freedom to express them (Article 10) is one of the objectives of exercising the freedom of assembly and association. Therefore, there is a strong link between Article 11 and Articles 10 and 9 of the ECHR. This is particularly relevant where public authorities⁷ interfere with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in a demonstration. Freedom of opinion includes freedom to seek, receive,

⁵ Kudrevičius and others vs the Republic of Lithuania, Application no. 37553/05.

⁶ Ezelin vs France, [1991] ECHR 29 and Laporte, Regina (on the application of) v Chief Constable of Gloucestershire HL (Bailli, [2006] UKHL 55.

⁷ Section 6 of the Human Rights Act 1998 places a duty on public authorities not to act incompatibly with certain rights and freedoms drawn from the ECHR. The words "public authority" for the purposes of section 6 are defined in section 6(3) as including courts and tribunals, and "any person certain of whose functions are functions of a public nature" The police is defined as a "public authority".

and impart information and ideas. The exercise of this right carries with it duties and responsibilities. Everyone, including children, migrant workers, asylum seekers and refugees, can exercise the right of peaceful assembly. In a number of cases the ECtHR has held that restrictions on hate speech can be justified under the general clauses of Article 10(2) or thought Article 17 of the ECHR.

Content-based restrictions

12. Content-based restrictions on the freedom of assembly are subject to the most serious scrutiny by national and international courts, including ECtHR. The State can interfere with a person's Article 10 right to freedom of expression where the interference is prescribed by law and necessary in a democratic society for specified aims, such as in the interests of crime or the protection of the rights of others. The ECtHR confirmed that "as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance."⁸ Furthermore, the ECtHR has also taken the approach of excluding speech from the protection of the ECHR by virtue of Article 17 of the ECHR⁹ (the prohibition on the abuse of rights), for example where it is contrary to the "values proclaimed and guaranteed by the

⁸ *Erkaban v Turkey*, 2006. In accordance with article 20 of the ICCPR, peaceful assemblies may not be used for propaganda for war (para. 1), or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (para 2).

⁹ *Norwood v. the United Kingdom*. ECHR16 Nov 2004.

Convention, notably tolerance, social peace and non-discrimination.”¹⁰

This is known as the *theory of the paradox of tolerance*: an absolute tolerance may lead to the tolerance of ideas promoting intolerance, and the latter could then destroy the tolerance.¹¹

Online and face-to-face gatherings

13. On 6 July 2018, the Human Rights Council adopted a resolution on the promotion and protection of human rights in the context of peaceful protests.¹² The resolution makes clear that this right must be protected on the Internet to enable (online and) offline protests. This normative development, also addressed how limitations on human rights online have implications for the exercise of the right to freedom of assembly offline. Today, it is crucial to ensure that the activities of internet service providers and intermediaries do not unduly restrict assemblies or the privacy of assembly participants.¹³ Any restrictions on the operation of

¹⁰ M’Bala M’Bala v. France, ECHR No. 25239/13.

¹¹ For example, in *Norwood v. the United Kingdom*, the applicant displayed in his window a poster supplied by the British National Party, of which he was a member, representing the Twin Towers in flames. The picture was accompanied by the words “Islam out of Britain – Protect the British People”. The applicant was convicted of aggravated hostility towards a religious group under section 5 of the UK Public Order Act of 1986. The applicant complained to the European Court of Human Rights. The Court dismissed the complaint on Article 10 from the applicant and declared it inadmissible, referring to Article 17 of the Convention, which prohibits any activity “aimed at the destruction of any of the rights and freedoms set forth herein”. The Court observed that the freedom of expression may not be used for the destruction of the rights and freedoms set forth in the Convention. It found that such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, was incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination. Any expression containing elements of racial and religious discrimination will thus fall outside the scope of Article 10.

¹² UN HRC resolution 38/11.

¹³ States should create an enabling legal framework for the right to peaceful assembly and association in the digital age. This is very important for some groups, including children and young

information dissemination systems must conform with the tests for restrictions on freedom of expression, Article 10(2).

Reasonable and appropriate measures

14. Notification, and even authorisation procedures, for a public event may not infringe Article 11 as long as the purpose of the procedure is to allow the public authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly. The use of invasive technologies and force to disperse the assembly, arrests of participants and ensuing fines, must remain in line with human rights standards. For example, 'kettling' is a controversial tactic in any situation, but in a pandemic it is one that is particularly alarming to see. Similarly the collection of personal data to harass or intimidate participants during demonstrations has raised some concerns from the UN Human Rights Committee.¹⁴ A wide discretion is granted, by the courts, to public authorities in relation to evaluate the security risks for both demonstrators and police officers and the appropriate measures dictated by the perceived risks. The provision of personal protective equipment during the coronavirus crisis is essential for police officers.

Dissemination and public participation

people, so the government should promote and facilitate access to digital technologies, and any restrictions should be based on the rule of law and be human rights compliant.

¹⁴ General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights – Right of peaceful assembly.

15. An important aspect, which has been highlighted in the recent lockdowns in Aberdeen (West of Scotland and north of England), is the lack of clarity and confusion between the regulations and government (& other bodies') guidance. In the case of Aberdeen, the 'new' regulations were published only hours before the Aberdeen lockdown came into force on 5th August and they were laid before the Scottish Parliament one hour before implementation. The same can be said from the set of guidance to university students, which emerged over the weekend of 25th September. This processes have allowed little time for thinking, preparation (for public authorities and public) and wide dissemination.¹⁵ This is important for those who want to exercise Article 11 rights. As it is the participation of those impacted by the policies in the design and evaluation of polices. The Information on any new measures adopted must be widely disseminated and accessible, this is translated into plain English, and appropriate time must be given for the public to familiarise themselves with these laws before criminal penalties are imposed.

Counter-assemblies

16. The right of peaceful assembly does not exempt participants from challenges by other members of society. Public authorities must respect

¹⁵ There is further evidence of the lack of sufficient consultation and scrutiny of proposed new measures in the circumstances which arose over the weekend of 25th September 2020, when new regulations were laid to further restrict public gatherings and associations in households in the aftermath of a spike in the number of positive tests amongst the Scottish student population. Significant confusion resulted between the implications in both law and universities' disciplinary procedures, after seemingly conflicted 'guidance' was issued.

and ensure counter-assemblies as assemblies in their own right, while preventing undue disruption of the assemblies to which they are opposed.¹⁶ The possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly. Restrictions have to comply with the Convention. This makes central the adequate training and resources for police officers involved in these operations/decisions to ensure the effective exercise of this right.

17. As mentioned above, the police has substantial discretion in assessing whether a proposed assembly poses any risk of endangering public safety in the current pandemic, but the presumption must be for the exercise of the right to a peaceful assembly. An interference requires justification by the strict standards of paragraph 2 of Article 11. Conditions for dispersal should be set out in law and be exceptional. In addition, the authorities need to be careful that restrictions are non-discriminatory and temporary responding to the nature of the health risk.

Oversight

18. Finally, oversight and independent scrutiny is an enduring and robust feature in Scottish and British society. So, it is essential to continue ensuring independent and transparent oversight of all bodies involved with peaceful assemblies, including through timely access to effective

¹⁶ *Ärzte für das Leben* v. Austria (application No. 10126/82), judgment of 21 June 1988.

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remedies (e.g. judicial and quasi-judicial remedies, Scottish Police Authority, HMICS, NGOs and national human rights institutions) before, during and after assemblies.

End.

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APPENDIX B

Work Plan

Appendix B is the updated Independent Advisory Group Work Plan, to reflect already agreed actions, what is complete or in place, and to stimulate ongoing discussion about the work required to ensure delivery against the terms of reference. It is an iterative programme, reflecting changes in priorities over time, while leaving sufficient flexibility to address matters urgently when this is required.

The agreed areas of focus are:

- i. The data and evidence required to support the work of the IAG as laid out in the terms of reference, and understanding what the data and evidence is telling us. Data and evidence will: be collated and reviewed; inform recommendations on an ongoing basis; and be reflected in public reporting.
- ii. Delivering and promoting access routes into the group via professional and community networks as well as open access via a public portal, to enable the public and impacted groups to share perspectives and give evidence to the IAG on their experiences. Findings are reviewed; inform recommendations on an ongoing basis; and are reflected in public reporting. Particular attention is paid to ensuring any disadvantaged or impacted groups are able to participate.
- iii. Maximising the use of the professional input and expertise from within and outside the group, to access and review supporting evidence, offer advice, and inform associated recommendations.
- iv. Focus on the human rights implications of the use of the temporary powers.
- v. Set up processes which allow the group to access data and public perspectives to offer advice on a “live” basis, to support the policing response to any changes in lock down and public health guidance.

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Work Stream	Actions	Status Update	Current Priorities
<p>Communications – raising awareness of the work of the Advisory Group, establishing access routes into the group for public and stakeholders</p>	<p>Email address for public communications</p> <p>Supporting correspondence for partners, public and interested groups</p> <p>Citizen Space portal set up for public feedback</p> <p>Website presence and updates provided</p>	<p>Complete - COVID19IndependentAdvisoryGroup@spa.pnn.police.uk</p> <p>Circulated by IAG members to contacts and stakeholders.</p> <p>Launched 1 June 2020, the deadline for feedback has remained under review, and is now extended until 31 October 2020.</p> <p>Web presence established; updates aligned to reports to SPA. The latest meeting notes are made available following each report to the SPA Board.</p>	
<p>Engagement</p>	<p>IAG members routinely reach out across their own networks to facilitate evidence gathering and support participation</p>	<p>Members continue to promote participation, via professional and community networks.</p> <p>Alternative access channels are now available to help combat digital exclusion.</p> <p>IAG Chair engagement and liaison with senior office bearers in the Scottish Police Federation and the Association of Scottish Police Superintendents.</p>	<p>Ongoing promotion to continue to gather public and stakeholder perspectives.</p> <p>Continuing review of public feedback, and follow up action to</p>

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Work Stream	Actions	Status Update	Current Priorities
Engagement	Engagement and information sharing with the National Independent Advisory Group (NISAG)	<p>IAG Chair attended the June 2020 NISAG meeting. The IAG has agreed to build closer links with NISAG, share information with NISAG where appropriate and strengthen the Advisory Group's access to NISAG members' expertise and perspectives on equality, diversity and community well-being impacts.</p> <p>NISAG is a Police Scotland sponsored group, made up of independent members offering advice on policies and process, particularly with regard to equality and diversity impacts and community well-being.</p> <p>5 August 2020 – IAG Chair provides article for the policing professional community, published in Policing Insight - "Policing the pandemic: How Scotland's IAG led the way on human rights under emergency coronavirus powers".</p> <p>2 September 2020 - The work of the IAG, including the contribution of the academic community to the work of the group, features in SIPR Annual Report 2019/20. http://www.sipr.ac.uk/Plugin/Publications/assets/files/Scottish%20Institute%20for%20Policing%20Research%20-%20Annual%20Report%202019_20.pdf</p> <p>11 September - an invitation to contribute to IAG meeting extended to COSLA.</p>	address any gaps in participation

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Work Stream	Actions	Status Update	Current Priorities
<p>Data and Evidence Gathering</p>	<p>Options, key questions and sources of evidence are identified and aligned with terms of reference. Data gaps are noted where they cannot yet be addressed.</p> <p>Discussions with staff and officers in different areas to discuss issues around the 4 Es and understand staff and officer perspectives.</p> <p>Ongoing liaison with OPTICAL group</p> <p>SWAN Scotland survey</p> <p>Police Scotland "Your Police" and</p>	<p>Data report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland prepared by Professor Susan McVie, made publicly available and reported to SPA Board 19th August 2020.</p> <p>Interim report on data for the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis Report prepared by Professor Susan McVie with assistance from Dr Fernando Pantoja and Dr Ana Morales (20 June 20)</p> <p>Her Majesty's Inspectorate of Constabulary in Scotland ("HMICS"): Independent Advisory Group Report on Interviews with Police Scotland Officers and Staff (June 2020)</p> <p>John Scott, Martyn Evans, Ephraim Borowski and Susan McVie are members of OpTICAL.</p> <p>Evidence and outcomes considered by the IAG, and reported publicly to SPA board 19th August 2020.</p> <p>Members considered evidence from Police Scotland Strategy and Insight on findings from the "Your Police"</p>	<p>Work is progressing to present a comprehensive review of data and evidence as part of the report to the SPA Board 25 November 2020.</p>

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Work Stream	Actions	Status Update	Current Priorities
Data and Evidence Gathering	<p>User Experience Surveys</p> <p>SPA Public Opinion Survey</p>	<p>and User Experience surveys including Covid-19 response and public confidence measures 7th August 2020</p> <p>Members considered evidence from the SPA Public Opinion Survey 31st July 2020, focusing on levels of public confidence in policing, and levels of support for the Police Scotland approach</p>	
Assessment of Human Rights Impacts	<p>D Quiroz (SHRC) has led preparation of guidance note for the IAG, incorporating relevant human rights provisions, for example, UN Guidance on the use of force by law-enforcement personnel in time of COVID-19 emergency</p> <p>Maria Galli (CYPCS) guidance note for IAG on human rights implications of regulations for</p>	<p>Scottish Human Rights Commission ("<i>SHRC</i>") Paper to Independent Advisory Group Considering Police Scotland Use of Temporary Emergency Powers: Human Rights Guide to Examining New Police Powers in Response to COVID-19 (Diego Quiroz, June 2020)</p> <p>SHRC paper on Article 11 of EHCR, Right to freedom of peaceful assembly, will be considered at the IAG webinar 5 October 2020.</p> <p>Children and Young People's Commissioner Scotland ("<i>CYPCS</i>") Briefing: The impact of emergency police powers on the human rights of children and young people in Scotland during the Covid-19 pandemic (Maria Galli, June 2020)</p>	<p>The IAG will continue to look at the policing of protests in a pandemic with a view to offering further thoughts in its final report.</p>

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Work Stream	Actions	Status Update	Current Priorities
<p>Assessment of Human Rights Impacts</p>	<p>children and young people</p> <p>Review of Police Scotland Impact Assessment processes</p> <p>Independent Children’s Rights Impact Assessment</p>	<p>Police Scotland processes to progress Community Impact Assessments, Equality and Human Rights Impact Assessment, and Child Rights and Wellbeing Impact Assessment were considered by the IAG 6 July 2020, as outlined in the report to the SPA Board 19 August 2020.</p> <p>Members were briefed by CYPCS and considered implications of the Independent Children’s Rights Impact Assessment 24 July 2020 https://cypcs.org.uk/wp-content/uploads/2020/07/independent-cria.pdf</p>	
<p>Drawing in additional expertise</p>	<p>The IAG invites input from a range of academic experts in the field, to inform the group’s deliberations. These discussions are more fully reflected in the meeting notes available on the IAG website -</p>	<p>Contributions from Professor Steve Reicher 1 May; Professor Ben Bradford 4 May, focused on factors supporting compliance, managing change and retaining public confidence; Dr Peter Neyroud 15 May 2020.</p> <p>22 May 2020: Dr Megan O’Neill, SIPR and University of Dundee.</p> <p>29 May 2020: Fran Warren and Francesca Gualco, Scottish Government Justice Analytical Services.</p> <p>1 June 2020: Professor Roger Halliday, Chief Statistician, Scottish Government.</p>	

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Work Stream	Actions	Status Update	Current Priorities
<p>Drawing in additional expertise</p>	<p>https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/iag-public-reports/</p>	<p>https://blogs.gov.scot/statistics/2020/05/28/our-response-to-covid-19/</p> <p>15 June 2020: Dr Liz Aston, Director of the Scottish Institute for Policing Research (SIPR). https://sccjrblog.wordpress.com/.</p> <p>10 July 2020 – Policing of Protests and the Pandemic. Cliff Stott, Professor of Social Psychology, Keele University</p> <p>Policing of protests may be significantly impacted by the pandemic and emergency powers. Professor Stott considered that Scottish Policing is building on success and innovation, particularly in the public health approach to tackling knife crime, and that this public health approach could be developed further in developing strategies around tackling sectarianism, and the policing of football.</p> <p>21 August 2020 – Dr. Michael Rosie, Senior Lecturer in Sociology, Programme Co Director Nationalism Studies, University of Edinburgh</p> <p>Dr. Rosie outlined the work he has undertaken over a number of years around marches, protests and parades, and discussed the impact of COVID 19 with members. Review of the 2016 Independent Report on Marches, Parades and Static Demonstrations in Scotland. https://www.gov.scot/publications/review-2016-independent-report-marches-parades-static-demonstrations-scotland/pages/4/</p>	

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Work Stream	Actions	Status Update	Current Priorities
Drawing in additional expertise		<p>2 October 2020 - Scheduled return attendance at the group by Professor Steve Reicher</p> <p>9 October 2020 – Scheduled return attendance at the group by Professor Ben Bradford</p>	
“Sounding board” for Police Scotland forward planning and communications	Ongoing role for group members, as representatives of civic Scotland, offering personal and professional expertise, and insight from across their professional and community networks.	<p>Group members had early sight of and offered feedback on refreshed guidance for officers, reviewed to take account of changing legislation and easing of lockdown.</p> <p>The group met with Gold Commander, DCC Malcolm Graham, for an overview of Operation Talla and related discussion.</p> <p>1 May IAG meeting – ACC Bernard Higgins (leads Police Scotland strategy and operations on service transition from lock down) attended to support IAG discussions to assist in informing strategy, including Communications.</p>	Ongoing challenges of transition period and understanding the impact of easing and tightening lock down, including local and national restrictions.
“Real time” advice and guidance – to Police Scotland; and to wider stakeholders via professional and community networks		<p>Real time contact with Divisional Commanders was established early in the work of the group, offering a “two-way street” for real time updates to members, and “live” input to Police Scotland to inform planning and response –and allow immediate discussion in appropriate circumstances</p> <p>Regular dialogue has been established between group members and Police Scotland at Executive and Divisional Command level on local policing and public impacts and perspectives, policing local lockdown, and the impact of</p>	Managing the ongoing challenge of offering advice and support for policing’s response in a developing and “live” situation, and when there may be a time-lag in the availability of supporting evidence.

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Work Stream	Actions	Status Update	Current Priorities
<p>"Real time" advice and guidance – to Police Scotland; and to wider stakeholders via professional and community networks</p>		<p>transition through the Scottish Government's phased approach out of lockdown.</p> <p>Completed – submission of open letter to Police Scotland from SWAN Scotland.</p> <p>Completed- Glasgow Disability Alliance. Advice on interactions with disabled people (Temporary Police Powers under Coronavirus Act); included as Appendix to the report to the SPA Board 19 August 2020.</p> <p>14th August - Chief Superintendent George Macdonald, Divisional Commander of the North East (Aberdeen City, Aberdeenshire and Moray) attended the IAG, following the Aberdeen City local lockdown. Members were briefed on a positive public response and adherence to the regulations, and the impact on policing during a period of high demand and emergency response following the very serious rail incident at Stonehaven.</p> <p>11th September - Divisional Commanders, Chief Superintendent Alan Murray, Renfrew and Inverclyde, Chief Superintendent Faroque Hussain, Ayrshire and Chief Superintendent Mark Sutherland, Greater Glasgow attended the IAG to update and discuss with group members the latest issues for local policing teams, and the impact of localised restrictions.</p> <p>The work of GDA on the impact of COVID-19 on disabled people will feature as part of Webinar discussions 5 October 2020</p>	

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Work Stream	Actions	Status Update	Current Priorities
	<p>IAG Chair correspondence to SPA Interim Chair on the use of face coverings, and wider application of lessons learnt from policing the pandemic which may have wider application across retail and public services.</p>	<p>https://gda.scot/wp-content/uploads/2020/09/GDA-Supercharged-Covid-19Report.pdf Sent 13th July 2020 https://www.spa.police.uk/spa-media/ivlmh5mp/letter-to-dc-vc-final.pdf</p>	
<p>Identify any additional work priorities to deliver against TOR</p>		<p>An initial review by the IAG Chair was undertaken, and reflected in forward planning for the IAG and the Chair's report to the SPA Board 30 June 2020. At the time, areas identified for future focus included Gaps in Powers, and Impact Assessments: Community Impact Assessment, Equality and Human Rights Impact Assessment and</p> <p>Police Scotland processes to progress Community Impact Assessments, Equality and Human Rights Impact Assessment, and Child Rights and Wellbeing Impact Assessment considered by the IAG 6 July 2020, as outlined in the report to the SPA Board 19 August 2020. No further evidence has been identified at this point relating to potential gaps in powers.</p>	

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Work Stream	Actions	Status Update	Current Priorities
Public reporting on progress	<p>Verbal report to SPA from IAG Chair 30 April.</p> <p>Written report to SPA board 20 May. Oral evidence to SPA from IAG Chair 20 May – questions arising from report.</p> <p>Oral evidence from the IAG Chair to the Justice Sub-Committee on Policing 9th June 2020.</p> <p>Written report to SPA 30th June 2020, and 19th August 2020; oral evidence from IAG Chair and Professor Susan McVie.</p> <p>Webinar - public event with the SPA Board 30 July 2020</p>	<p>Complete https://livestream.com/spa/april2020</p> <p>Complete https://www.spa.police.uk/media/s0qlq5fy/rep-b-20200518-item-5-iag-report-to-spa-board.pdf https://livestream.com/spa/may2020</p> <p>http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12687</p> <p>The Chair is scheduled to provide additional evidence to the Justice Sub Committee Monday 16 November 2020.</p> <p>https://livestream.com/spa/30june2020</p> <p>https://livestream.com/spa/iagwebinar</p>	<p>Progressing the work programme and gathering additional evidence to deliver against the Terms of Reference, for report to the SPA 30 September 2020; additional focus at the Webinar 5 October 2020; with a comprehensive report to the SPA scheduled 25 November 2020.</p> <p>A further webinar is scheduled for 5 October 2020.</p>

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Work Stream	Actions	Status Update	Current Priorities
	Written report to SPA 19 August, and oral evidence from the IAG Chair and Professor Susan McVie.	https://livestream.com/spa/events/9252333	