JUSTICE SUB-COMMITTEE ON POLICING

AGENDA

6th Meeting, 2020 (Session 5)

Tuesday 9 June 2020

The Committee will meet at 10.00 am in a virtual meeting and be broadcast on www.scottishparliament.tv.

1. **Decision on taking business in private:** The Sub-Committee will decide whether to take item 3 in private. The Sub-Committee will also decide whether to consider future approaches or amendments to the work programme, approaches to all calls for evidence, consideration of evidence taken and all draft reports in private during the Covid-19 public health emergency.

2. **Policing during the coronavirus pandemic:** The Sub-Committee will take evidence from—

   John Scott QC, Chair of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis;

and then from—

Chief Constable Iain Livingstone, Police Scotland.

3. **Policing during the coronavirus pandemic:** The Sub-Committee will review the evidence heard earlier in the meeting.

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The papers for this meeting are as follows—

**Agenda item 2**

Paper by the Clerk  
JSP/S5/20/6/1

PRIVATE PAPER  
JSP/S5/20/6/2 (P)

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Justice Sub-Committee on Policing
6th Meeting, 2020 (Session 5), Tuesday 9 June 2020

Note by the Clerk

Policing during the coronavirus pandemic

Background

1. The Justice Sub-Committee on Policing is to hold an evidence session on policing during the coronavirus pandemic.

2. The Sub-Committee will take evidence from John Scott QC, Chair of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis, and then from Iain Livingstone, Chief Constable, Police Scotland.

3. The Sub-Committee will consider Police Scotland’s approach to policing during the coronavirus pandemic and the progress of the review of Police Scotland’s use of the emergency powers.

4. The written submissions received can be accessed here. The Interim Report of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis can be accessed here. An Executive Summary of the report is provided at Annexe A.
Interim Report of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis

2. Executive Summary - Emerging Themes and Findings

Compliance
The significant levels of public compliance with Regulations and guidance have rightly been the subject of much comment and appreciation. Significant levels of compliance should not mask the fact that the impact of restrictions has not been equally felt, with those living in already difficult circumstances, such as overcrowded housing and poverty, often more seriously impacted.

Public Attitudes
Overall, public support for the police appears high. One recent survey indicates not only public support but, remarkably, suggests increased levels of public support and approval of policing in Scotland. There is certainly no evidence of any decline in public confidence. This is a useful indication of the principle of policing by consent in practice in the most challenging of circumstances, especially with policing at the forefront of enforcement at this stage. There are some tensions in public thinking about where to strike a balance, with some expressing the desire for more enforcement and some thinking that current powers go too far.

"Normal" Policing
(Outwith Terms of Reference for IAG but relevant for context)
Lockdown may have impacted on the commission of certain types of crime but serious concerns have been expressed about the impact of lockdown for those in violent and abusive relationships and increased time spent online has also increased risks to various forms of cybercrime, especially amongst children and young people.

Communications - General
Public messaging from constabularies in England and Wales has been, at times, contradictory and confusing, and some of that confusion has filtered through to Scotland. The approach of Police Scotland in public statements has been to emphasise ‘common sense’ as the key guiding principle rather than detailed guidance. The absence of detailed guidance in Scotland has no doubt prompted some questions here that may have been answered in England, and created particular difficulties for some, but Police Scotland have not had to issue the number of “clarifications” that have been a feature of communications in England and Wales.

Communications - Regulations/ Guidance
One of the key areas of confusion in communications has been the difference between the new criminal offences contained in Regulations, and advice to the public from government by way of guidance. Clear messaging was needed to ensure that there was sufficient awareness of what members of the public were being asked to do and what they were required to do or avoid doing. That the law criminalised less than the guidance, was not always fully or clearly articulated or understood.
Exercise of the Powers
In general terms, our informed impression at this stage is that enforcement powers have been used only as a last resort and only when necessary and proportionate. Mistakes will be made but in Scotland, we have heard, as possible examples, of a small number of issues and problems, for example, in relation to people sitting down or stopping in public parks.

Training for officers on the emergency powers needs to offer reminders of the need for awareness and care, for example, as regards autistic persons or those with hidden disabilities in terms of their needs to access spaces outside their homes for mental and physical health. We acknowledge that a lot is being asked of frontline officers. Data indicates variation in the extent of use of the powers in different geographical areas. This is likely to have happened for a variety of reasons, including cultural. The data prompts questions and we hope to pick up on the reasons for geographical variations in engagement with police officers and affected members of the public.

Fixed Penalty Notices
A number of factors may have contributed to an increase in the numbers of Fixed Penalty Notices (FPNs). The more people out and about, the greater the likelihood of FPNs. The Chief Constable has acknowledged that some Fixed Penalty Notices have been issued in error.

Complaints
Some individuals may wish to let us know of their experience but also to pursue other courses of action or remedies through established procedures in place for complaints involving Police Scotland. We will continue to ensure appropriate signposting.

Transitions and Differentiation – Policing by Consent
Increasing differentiation between different sections of the public as to who is impacted by the powers may jeopardise the extent of public support. There is a need for society to find ‘enablers’ for those who are most susceptible to the impacts of the pandemic to comply, so as not just to criminalise the already disadvantaged. There will be an increasing role for local authorities and others, for example, in ensuring that more public parks and other spaces are available to allow for our right to exercise without limit.

If rules are introduced that allow some people more freedoms than others, this may be perceived as unfair and, potentially, illegitimate in the eyes of the public. The police have a difficult line to tread, and this requires governmental recognition of the impact of developing policies that breach normal principles of equity, albeit in the interests of saving lives.

Revised College of Policing guidance is that officers should only enforce the Health Protection Regulations – government guidance is not enforceable, for example two-metre distancing, avoiding public transport or the wearing of face coverings in enclosed spaces. We consider that this key message should continue to be emphasised in Scotland.