

Meeting	SPA Policing Performance Committee
Date	28 May 2020
Location	Teleconference
Title of Paper	Police Scotland Custody Update Report
Presented By	Chief Superintendent Garry McEwan
Recommendation to Members	For Discussion
Appendix Attached	Appendix A – Custody Operating Model

PURPOSE

The purpose of this paper is to provide an update in relation to Police Scotland's Custody and wider Criminal Justice response during to the coronavirus pandemic. The national policing response to the pandemic is managed under the banner of Operation Talla.

The paper covers changes to our operating model, Health and Safety considerations as well as the introduction of new approaches and innovative technology to better manage demand enabled by emergency legislation.

Members are invited to discuss the content of this report.

1. BACKGROUND

New Legislation

- 1.1 As a result of the Coronavirus Pandemic there have been 3 pieces of legislation released in the UK that have an impact on Police Scotland.

The Coronavirus Act 2020:

- 1.2 This act commenced on 25 March 2020 and relates primarily to public health concerns and gives Police and Public Health Officers power to remove and keep suspect infectious individuals in designated places for the purposes of testing and treatment. There are specific powers of entry in relation to these powers and offences are created for individuals failing to comply with a direction given. Powers of arrest in relation to the offences come from the Criminal Justice (Scotland) Act.

The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020:

- 1.3 These regulations are made under the Public Health (Scotland) Act and were enacted on 27 March 2020 and provide powers to a relevant person to, require the closure of premises and businesses, and Restrict movements and gatherings of individuals.
- 1.4 The regulations provide power to direct individuals to return home or gatherings to disperse and makes it an offence to fail to comply. However, there are some differences between what the regulations cover and what is mentioned in Government advice.
- 1.5 Offences can be dealt with by Fixed Penalty notice which increases in value for subsequent issue to the same person. FPN operates using existing ASB FPN framework and there are Lord Advocate Guidelines in respect of their issue. Lord Advocates Guidelines provide that Police Scotland are able to issue FPN's to an individual up to a maximum amount of £480 (maximum in legislation is £960).
- 1.6 The Regulations are silent in terms of power of arrest and arrest in terms of Criminal Justice (Scotland) Act 2016 is possible where it would not be in the interests of justice to delay the arrest in order to seek a warrant (e.g. refusing to desist).

The Coronavirus (Scotland) Act:

- 1.7 This emergency legislation was passed through the Scottish parliament on 01 April 2020. This Act mainly deals with procedural matters and does not give the police any additional powers, but allows for flexibility within Youth Justice and Children's hearings process, allows for courts and tribunals to conduct business by electronic means, allows the calling of criminal proceedings where a subject is to appear from police custody to be heard in any sheriff court in Scotland, extends the admissibility of hearsay evidence, extends time limits for completion of court orders and allows for the extended release of prisoners who fall within specific criteria where it is necessary and proportionate to do so in response to the effects coronavirus is having on a prison or prisoners.

2. FURTHER DETAIL ON THE REPORT TOPIC

Further Legislation

- 2.1 The Coronavirus (Scotland) (No. 2) Bill is currently progressing through parliament and anticipated to become law on 25 May 2020. This makes additional procedural changes in terms of time limits for provision of reports, amends the definition of police custody and functions of Prison Custody Officers to facilitate virtual court appearances from police custody and makes an amendment to the expiry of undertaking conditions if reasons for failing to attend court are Coronavirus related. The paper also extends limits to consider seizure of cash under the Proceeds of Crime Act.
- 2.2 In addition the Scottish Government will soon introduce the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 which will work in concert with the UK legislation regarding international travellers need to self-isolate for 14 days on return to the United Kingdom. The provisions for enforcement are similar to those in the existing Health Protection regulations.

Lord Advocates Guidelines

- 2.3 As a result of the legislative changes amended Lord Advocate guidelines have been introduced to take into account the unique circumstances that all Criminal Justice agencies face with the current pandemic. The new guidelines reinforced the need to ensure no person is kept in custody unnecessarily whilst continuing to ensuring appropriate safeguards are in place to ensure public and victim safety. This included individuals arrested on pre-conviction warrants.

- 2.4 Since the 23 March 2020, Police Scotland has processed 12,942 persons through police custody, of which 407 have been flagged as COVID-19 custodies, this compares with 19,555 persons during the same period in 2019. As a result of the revised guidelines and further training and support to key decision makers, the proportion of people held in custody to attend court has reduced from approximately 50% to 30% and police undertakings have seen a corresponding increase from approximately 15% to 35% of throughput. In addition to this, the overall average time a person spends in police custody has reduced by approximately 40%.
- 2.5 Our decision making in respect of the application of the guidelines has received very positive feedback from COPFS.
- 2.6 The new Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 introduced unprecedented powers to policing in Scotland which significantly impacted on an individual's human rights. At very short notice and in conjunction with the National Police Chiefs Council the division introduced policy and guidance for the application of these regulations by officers.
- 2.7 Key to this is the four stage model of Engage, Explain, Encourage and Enforce as a last resort. To facilitate the swift and effective introduction of the regulations, they were based on existing Anti-social Behaviour Legislation where the issue of a Fixed Penalty Notice on an escalating scale could be introduced.
- 2.8 Further to this, discussion took place with Local Authorities to assist in providing advice and guidance to business premises not specified within the regulations regarding safe systems of work.
- 2.9 The focus has at all times been to contribute to the overall government aim to save lives and protect the NHS.
- 2.10 The legislation also introduced some very welcome changes which allowed for many legal documents to be processed electronically rather than requiring personal service or personal signature. This significantly removed demand from policing.

Custody Operating Model

- 2.11 At the outset of the pandemic, Criminal Justice Services Division established a divisional governance structure to support the Custody and Criminal Justice response.

- 2.12 A reduced operating model was introduced to better manage demand, address health and safety requirements whilst also freeing up resources to support front line policing operations, the centres selected to stay open as primary operating centres were chosen on basis of throughput demand analysis, general arrest locations, regional capacity requirements, alignment to the revised operating model for courts and provision of partner resources and healthcare.
- 2.13 The operating model has been kept under continual review with additional demand led facilities coming back online as throughput has increased over time. The current operating model is detailed at Appendix A.
- 2.14 Four custody centres were immediately designated as COVID-19 reception centres and staff were prioritised for training and early distribution of PPE in order that they could safely deal with suspect COVID-19 cases. Over time, staff training and PPE has increased and there are now 10 designated COVID-19 centres across the country.
- 2.15 This revised operating model has ensured maximum support and benefit to Local Policing with minimal backfill requirements and additional resources being made available. During the month of April 2019, backfill requests reduced to 88 from 760 during March 2020 and 25 constables were redeployed to front line policing. There was strong engagement, consultation and support from our staff associations throughout this process.
- 2.16 In addition to this, CJSD staff have also routinely undertaken constant observation duties during this period, creating further additional capacity for Local Policing colleagues.
- 2.17 Regular engagement with HMICS has taken place throughout. In addition following discussions with the Independent Custody Visitors Scheme a pilot process involving the use of mobile telephones by custodies commenced in the week beginning Monday 18 May 2020 ensuring as far as possible, in the current circumstances that appropriate external scrutiny continues to be applied to our custody environment, practices and processes.

Virtual Courts

- 2.18 With a reduced number of custody suites, Virtual Court (VC) technology has been rapidly introduced to enable virtual courts to be undertaken for prisoners deemed to be 'at risk' of COVID-19

thus reducing the risk of contamination to other Criminal Justice partners and enabling better risk management.

- 2.19 Virtual Courts have been introduced into 11 custody centres inclusive of the 10 COVID-19 centres and with Scottish Government funding support will now be rolled out across further centres with capacity to be doubled in key centres. This will enable justice partners to maximise use of virtual courts with 34 VC units to be installed in total.
- 2.20 The VC courts can connect to any open court building in Scotland and significantly reduce the requirement to move prisoners whether suspected COVID-19 cases or not.
- 2.21 To better manage demand and address health risks, work has also been progressed to mitigate prolonged stays in custody due to court holidays and custody courts have now been held over two court holidays in May. Work is also ongoing with partners to develop proposals for weekend courts to further reduce the time people spend in custody, manage capacity issues in courts caused by physical distancing requirements and address the associated health implications arising.
- 2.22 Police Scotland are working with the Scottish Prison Service and GeoAmey to agree processes subject to the relevant legislation being enacted.
- 2.23 The Justice Board vision is that all Custody first appearances will be undertaken by means of Virtual Court from Police Custody. This is viewed as a vital step in building new capacity into the court system as the Justice System begins to recover.

Health and Safety

- 2.24 Criminal Justice Services Division have representation on the Operation Talla Health and Safety sub group and all COVID-19 centre custody staff are equipped with the agreed standard of PPE which includes FFP3 face fitted masks, goggles, overall paper suits, over boots and long cuffed gloves. Safe systems of work have been introduced and additional Estate modifications, including the introduction of screens at custody charge bars, have been made to provide additional protection to staff and prisoners.
- 2.25 From the outset of the pandemic, Criminal Justice Services Division also convened and chaired daily Healthcare Partnership meetings with representation from NHS Custody Healthcare staff across

Scotland as well as Home Office Immigration Enforcement (HOIE), Scottish Ambulance Service, Scottish Government and operational police representatives. This has been an extremely effective forum for developing shared guidance, best practice and information sharing across Custody Healthcare and are now held on a weekly basis. A number of national guidance documents have been developed and it is of note that the Police Scotland custody guidance was the first in the UK to be published with no other bespoke guidance for Police Custody available at the time of drafting.

Future Considerations and the wider Criminal Justice system

- 2.26 As members may be aware there are currently a very limited number of trials proceeding due to the pandemic. There is a growing backlog of cases which are still to proceed. Police Scotland are working as a key partner in the wider Criminal Justice system to assist in the management of a revised model. It is anticipated that virtual courts, not just for custodies, but also for trials will be a key element of this going forward. The Scottish Courts and Tribunals Service estate will be under significant pressure to facilitate court business going forward and novel and innovative solutions are required across the system with some urgency. A key consideration within the new system will be how to further progress the evidence procedure review which seeks to minimise the points of contention prior to a trial taking place.
- 2.27 In order to facilitate this key projects such as the Digital Evidence Sharing Capability (DESC) will likely need to be prioritised and their initial scope increased. The DESC programme board meets on 28 May 2020 to discuss restarting and accelerating the programme.
- 2.28 The emergency legislation has brought with it various significant benefits to the whole Criminal Justice system and there is a desire from all partners to ensure that these benefits are maintained going forward.
- 2.29 Given the urgency of the need to support the wider Criminal Justice system there may be a need to consider new change projects or accelerate existing projects at pace. Police Scotland have a duty as a key partner within the wider Criminal Justice system to support recovery, renewal and transformation in the Criminal Justice system to maintain public confidence and meet national justice outcomes.
- 2.30 Throughout the pandemic Deputy Chief Constable Will Kerr as a member of the Justice Board, has continued to actively consider the

challenges facing the wider system. These discussions continue on a regular basis.

Conclusion

- 2.31 Police Scotland Criminal Justice Services Division have in conjunction with Justice Partners introduced a range of innovative and transformational changes to manage the Custody and wider Criminal Justice in response to the COVID-19 pandemic.
- 2.32 The changes introduced, so far, have ensured the safety of our staff and those members of the public still coming into police custody whilst also ensuring the continued safe and effective operation of the Justice System during the initial phase of this pandemic. These changes have supported the wider Operation Talla to save lives and protect the NHS.

3. FINANCIAL IMPLICATIONS

- 3.1 Overall the financial implications are being monitored through Operation Talla. However the overall funding for VC Units, Police Scotland secured support to the value of £132,000. Whilst there will be financial implications to accelerate and re-prioritise projects, the efficiencies and benefits of the changes already implemented in response to the pandemic will outweigh the cost of doing nothing and reverting to normal. The relevant projects will have already been costed, however their delivery timeframe may require review to maximise the benefits as a result of emergency changes to legislation and process.

4. PERSONNEL IMPLICATIONS

- 4.1 Engagement has been undertaken during the pandemic period with staff associations and representatives to keep them fully informed of changes.

5. LEGAL IMPLICATIONS

- 5.1 Various changes to legislation as in the main body of the report.

6. REPUTATIONAL IMPLICATIONS

- 6.1 Failing to engage with the changes to Justice system may lead to public loss of confidence in the Justice system as a whole. If the police do not support the changes, Criminal Justice partners may

also lose confidence in the police which would damage the delivery of justice outcomes within Scotland.

7. SOCIAL IMPLICATIONS

- 7.1 Failure of the police to effectively manage the provision of relevant PPE and other health and safety provisions could, owing to the infectious nature of COVID-19, cascade into officers and staff's non-working life with the potential to affect family members. Failure to appropriately and proportionately apply the new legislation would have a negative impact on public trust and confidence in policing.

8. COMMUNITY IMPACT

- 8.1 Police Scotland's approach to the Health protection regulations, if not followed through, could compromise Scottish Government messaging of Stay Home, Save Lives and protect the NHS. It is therefore vital that a proportionate policing response to a public health crisis is delivered.

9. EQUALITIES IMPLICATIONS

- 9.1 There are no equalities implications associated with this paper.

10. ENVIRONMENT IMPLICATIONS

- 10.1 The move to having all custody's appear by video link at any court reduces the overall carbon footprint of the Justice system as there is less requirement to transport individuals to court or between different police stations to facilitate appearance.

RECOMMENDATIONS

Members are invited to discuss the content of this report.

Appendix A

Custody Operating Model

Aberdeen	Designated Covid-19 centre Virtual Court enabled
Fraserburgh	Closed until further notice
Elgin	Closed until further notice
Dundee	Designated Covid-19 centre Virtual Court enabled
Perth	Closed until further notice
Inverness	Designated Covid-19 centre Virtual Court enabled
Falkirk	Designated Covid-19 centre Virtual Court enabled
St Leonards	Designated Covid-19 centre Virtual court enabled
Livingston	
Dalkeith	Closed until further notice
Hawick	Closed until further notice
Dunfermline	
Kirkcaldy	Closed until further notice
London Road	CLOSED FOR REFURBISHMENT
GCCPO (Stewart Street)	Closed until further notice
Govan	
Cathcart	Designated Covid-19 centre Virtual court enabled
Greenock	Designated Covid-19 centre Virtual court enabled
Dunoon	Demand Led
Rothesay	Demand Led
Ayr	
Kilmarnock	Closed until further notice
Saltcoats	Covid-19 centre - Virtual Court enabled
Stranraer	Demand Led
Dumfries	Designated Covid-19 centre - awaiting virtual court set up.
Coatbridge	
Motherwell	Designated Covid-19 centre Virtual court enabled
Lanark	Closed until further notice
Clydebank	
Campbeltown	Demand Led
Oban	
Lochgilphead	Demand Led