

Meeting	Authority Meeting
Date	30 June 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
Recommendation to Members	For discussion
Appendix Attached	Appendices A - F

PURPOSE

To provide the Second Interim Report of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis.

Appendices Attached -

Appendix A - Terms of Reference Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis

Appendix B – Independent Advisory Group Work Plan

Appendix C - Scottish Human Rights Commission ("*SHRC*") 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)

Appendix D - Children and Young People's Commissioner Scotland ("*CYPCS*") 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)

Appendix E – HMICS: Independent Advisory Group Report on Interviews with Police Scotland Officers and Staff (June 2020)

Appendix F - 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)

To the Board of the Scottish Police Authority

For the Meeting of 30 June 2020

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

Chair's Introduction

"I recognise that Police Scotland has to do what the Government dictates so if there is a chance for Police Scotland to feed back to the Government that the public consider it is now time to lift the COVID restrictions ... and let the Police get back to dealing with real crime, that would be most welcome."

This quote is from one of the responses which came to the IAG by way of the public portal which went live on 1 June 2020. It expresses understandable frustration with almost three months of lockdown and recognises the "normal" demands on policing as a priority. It is not accurate when it comes to the way policing operates in this country, or the way it should operate in any democracy. Police Scotland uphold laws passed by the Scottish Parliament. In situations of urgency, that may mean regulations promulgated by the Scottish Government but not yet approved by the Parliament. When laws are passed, how they are enforced becomes an operational matter to be decided independently by the Chief Constable. In other words, while Government and Parliament may set the parameters, Police Scotland do not have to do "*what the Government dictates*" when it comes to operational decisions within those parameters. The distinction between upholding the rule of law (always) and enforcing a particular law (sometimes) is at the heart of the police exercise of discretion (and having operational independence to do so) and it is applied every day by police officers, from the newest constable through to the Chief Constable.

Operational independence of the police is a crucial feature in any democracy. It is important for this to be appreciated by the police service, the government and the public.

The classic definition of operational independence, albeit not without its critics, comes from Lord Denning in an appeal decision in 1968, referring to the Metropolitan Police Commissioner¹:

“No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.”

[NB While the main principle outlined here holds good in Scotland, the decision whether to prosecute lies exclusively with the Crown Office and Procurator Fiscal Service.]

Public trust and confidence is likely to be good in a police service that is perceived to exercise its discretion well. It may not be if the service was inflexible and acted on every apparent infraction. Evidence we have seen from different sources shows public confidence was maintained, even increased, during lockdown in Scotland. The police approach was to assume people wanted to comply and would do so with engagement, encouragement and explanation. This was also the human rights approach from United Nations advice². Enforcement action was to be limited and aimed at protecting all our public health, recognising that, for many, *“policies such as curfews can be the more direct threats to their dignity and wellbeing than even the virus itself.”* Within policing, there was acknowledgement that Police Scotland had performed well in exceptional and challenging circumstances:

- Overall view was that Police Scotland responded well in terms of guidance and instruction to officers given the pace with which the legislation was enacted.

(key findings in Her Majesty’s Inspectorate of Constabulary in Scotland Report, see appendix).

Coronavirus legislation has been part of a complex package of sometimes contradictory communications between governments and the

¹ *R v Metropolitan Commissioner, ex parte Blackburn*

² <https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch1.pdf>

OFFICIAL

people, involving guidance it was hoped that the public would follow and less prescriptive regulations that required compliance but have become increasingly difficult to police.

While it is not unknown for legislation to be passed with a view to simply “sending a message” to the public about concerns and priorities, it is important to keep in mind that some laws are more workable than others and command greater public attention and concern (the “*real crime*” of our respondent quoted above).

The expression “compliance realism” (possibly worth considering also as “enforcement realism”) has entered the lexicon as regards policing the pandemic. “Compliance realism” is an acknowledgement that some laws may be unworkable, in terms of expecting the public to be able to comply and the police to be able to enforce. It is worth considering this a little more because, as opposed to simply recognising, as our respondent suggests, that “*the public consider it is now time to lift the COVID restrictions*”, other factors have also affected the capacity of Police Scotland to police the lockdown.

For the last three months, Police Scotland have had significant additional responsibilities and powers related to Coronavirus. For a time, these additional responsibilities were counter-balanced by a reduction in “normal” policing demands brought about, at least in part, by the lockdown. Thus, the reduction in, for example, shoplifting which seemed to so impress the Home Secretary³, allowed Police Scotland some more time to be seen and engage with the public as we all worked together in trying to establish new routines involving as little time outside our homes as possible. As levels of demand in traditional policing matters have returned to normal, so the availability of police officers to be seen and engage with the public has reduced. In addition, the easing of restrictions has reduced some of the need for policing visibility, albeit perhaps refocussing it around large gatherings.

The following questions appear apt at this stage of lockdown, having recently moved into phase 2 in Scotland:

³ <https://www.thelondoneconomic.com/politics/priti-patel-brags-about-shoplifting-being-down-during-lockdown-heres-the-best-reactions/26/04/>

Can/should we expect the public to continue to behave as if the pandemic was still at its height? Assuming that the answer is “no”, how do we encourage compliance with guidance if there is an increasing gap between guidance and regulations?

Can/should we expect Police Scotland to enforce all continuing aspects of the lockdown as if the pandemic was at its height, especially given the capacity of the organisation as “normal” policing demands return to normal levels?

It is important to recognise the context of this report. It updates the Board of the Scottish Police Authority (“SPA”) with a summary of some of our work since the first interim report dated 20 May 2020, bringing our work up to date as at, and a little beyond, the conclusion of phase 1 of the Scottish Government’s Route Map⁴ on 28 May 2020. This first period represents, thus far, the lockdown at its most intrusive. All the evidence and data should be seen in that light. One of the advantages of our review is the absence of hindsight – we started looking at the use of the emergency powers at a time when they were being used most frequently and thereafter as their use settled into more recognisable, consistent and reduced patterns. It is to be hoped that such restrictions will not be necessary again, but this cannot be ruled out. In that event, it should be useful to be able to look back at the period which involved policing *of* the pandemic as we move increasingly to an operational focus on policing *during* the pandemic.

Our report is accompanied by the following documents as appendices:

1. Scottish Human Rights Commission (“SHRC”) 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)
2. Children and Young People’s Commissioner Scotland (“CYPCS”) 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)

⁴ <https://www.gov.scot/collections/coronavirus-covid-19-scotlands-route-map/>

OFFICIAL

3. Her Majesty's Inspectorate of Constabulary in Scotland ("*HMICS*"): Independent Advisory Group Report on Interviews with Police Scotland Officers and Staff (June 2020)
4. 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)

Each paper or report has been prepared to assist the IAG in its work. Together, they provide a great deal of detail and will no doubt be of interest to the SPA Board. We appreciate that, perhaps in particular, Professor McVie's interim report on data will be the subject of close scrutiny. To that end, Professor McVie has agreed to attend the Board meeting on 30 June. As the data report is an interim report, it may be that further consideration might usefully be given to subsequent reports on data from Professor McVie, for example, at future Board meetings.

Obviously, we continue to work closely with the SPA on a weekly basis through Martyn Evans and our secretariat. I wish once more to record my thanks to the SPA staff who provide our secretariat – Eleanor Gaw, Fiona Miller, Jennifer Blackwood and John McCroskie. They work to a very high standard, turning round requests with remarkable efficiency and operating at all times of day and night. I am also grateful to David Crichton, Vice-Chair of the SPA Board, for his continuing support and advice.

For consistency, we have tried to adopt a similar framework to our first interim report, starting with brief recaps on some of the headings in our first report, although there is more emphasis this time on evidence, including data and lived experience of the public and police officers.

John Scott QC Solicitor Advocate

28 June 2020

OFFICIAL

Compliance and Enforcement: Exercise of the Powers – Fixed Penalty Notices; Complaints

This is an area addressed more fully in Professor McVie's interim data report.

It is worth quoting from Professor McVie's report (Section 3.5) as regards the system put in place by Police Scotland to capture relevant data:

- *It is difficult to provide an accurate comparison of policing activity during the lockdown in Scotland with similar activity in other parts of the UK, as there is little comparable data. Police Scotland established the Coronavirus Intervention (CVI) System to record all policing activity, from low-level dispersal through to enforcement using Fixed Penalty Notices (FPNs) and arrests. The CVI System provides an extremely useful tool for evaluating the policing response to the pandemic and how this has changed over time. However, no equivalent system was established in other parts of the UK.*

The CVI System has been adapted as the pandemic has proceeded. There may be recommendations for further additions to the system but Police Scotland are to be commended for introducing it.

Looking at the phase 1 as a whole, overall public compliance with lockdown was remarkable.

- *The vast majority of the public have been compliant with the legislation and supportive of the role undertaken by police officers and staff*

(key findings in HMICS Report).

At the early stages, there was more use of all 4 Es (engage, explain, encourage, enforce), including enforcement but this reduced quite quickly to the point at the end of phase 1 where there was a more consistent pattern involving far less use of enforcement.

- *In the 83 days from 27th March to 17th June 2020, a total of **53,112 interventions using the emergency policing powers were***

recorded on the Police Scotland Coronavirus Intervention (CVI) system (an average of 640 per day).

- ***The vast majority (92.8%) of all interventions recorded on the CVI System involved dispersal**, either after being informed of the public health risks by police officers (74.2%) or after being explicitly instructed to disperse (18.6%). Only 6.1% of all recorded interventions involved issue of a Fixed Penalty Notice (FPN) and 0.5% involved use of arrest powers.*
- *During the first four weeks of lockdown, data from the CVI System showed that officers were using enforcement in around 22% of all recorded interventions; however, **as the lockdown continued police officers have increasingly come to rely on more informal measures**. This is consistent with Police Scotland messaging around use of the 3 Es (engage, explain, encourage) in the majority of cases, moving to the 4th E (enforcement) only when absolutely necessary.*

(Section 3.1, Interim Data Report, Professor McVie et al, with more detail on the change over this period in Section 3.3)

- *Although there are some differences, Figure 5 indicates that **there is a fairly consistent picture across Divisions in the relative use of the different intervention types**. Analysis (not presented here) suggests that this was not the case in the early days of the lockdown, but **over time the Divisions have become more consistent in their practice**. This is likely to be due to a combination of factors, including close supervisory oversight of police officers' use of the powers, sharing of organisational learning across Divisions and consistency of messaging from Police Scotland around the use of the 4 E's.*

(Section 3.2.4, ibid)

- ***The most common intervention used overall was dispersal of a gathering**. In the first four weeks of the lockdown, dispersals*

OFFICIAL

represented 76.6% of all interventions; however, by 17th June this had risen to 92.8%. It is clear that **as the lockdown has gone on, use of the first 3 E's has increasingly taken priority.**

- *Four out of five dispersals occurred after officers had provided information only, while one in five occurred after an explicit instruction had been given. This suggests that **in the vast majority of instances officers were able to rely on the first 2 E's, engagement and explanation.***

(Section 3.2.5, *ibid*)

- **Enforcement represented only 6.6% of all interventions during the period to 17th June.** This is a marked reduction on the equivalent figure of 21.9% during the first four weeks of lockdown. Most enforcement involved issue of FPNs (6.1% of all activity) with the use of arrest being rare (0.5% all activity).

(Section 3.2.6, *ibid*)

One aspect of the Professor McVie's report which catches the eye relates to comparison of FPN data as between Scotland, England and Wales:

- *Table 1 shows the total and average daily number of Fixed Penalty Notices (FPNs) issued in each country. This is converted into an average daily rate per 10 million people, taking different population size into account. It shows considerable variation between countries, with Wales having the highest overall rate of FPNs per capita and England having the lowest. Notably, the rate per capita of FPNs in Scotland is 2.1 times higher than that for England; while the rate in Wales is 2.6 times higher.*

Table 1: Total number of Fixed Penalty Notices issued under the temporary policing powers (27th March to 8th June)

Country	Total number of FPNs issued	Average per day	Population size	Average daily rate per 10m people

OFFICIAL

Wales	2,282	30.84	3,138,631	98.3
Scotland	3,240	43.78	5,438,100	80.5
England	15,715	212.36	55,977,178	37.9

(Section 3.5, ibid)

It is important, however, to read the next paragraph:

- **Caution is required in interpreting these cross-country comparisons.** Overall, the number of FPNs issued in each country is small in absolute terms and the population sizes are large, which makes comparing rates problematic. For example, if the total number of FPNs in Scotland had been increased by just over 700 (or 22%) - which would equate to around 10 additional FPNs per day - it would reach the same average daily rate as Wales. Likewise, if the number of FPNs in England were increased by around 25,000 (or 160%) – equating to around 340 per day nationally, or an additional 8-9 FPNs per day per police force - it would have the same effect. Thus, relatively small changes in daily numbers either way could have significantly influenced these rates. In addition, it is clear that there has been varying practice in terms of how police forces have responded to the pandemic across the UK; therefore, **no strong conclusions can be drawn from these figures.**

(Section 3.5, ibid)

The rate of FPNs in Scotland must be seen in context. It is only one aspect of the data and other evidence we have collected. If the other data and evidence suggested that the rate of FPNs was problematic, there might be more concerns. It is also important to bear in mind that there are no true comparators for this type of public health policing. In effect, Police Scotland and the public had to learn together how to make the lockdown work. As acknowledged by the Chief Constable, mistakes were made by police officers, as they were by members of the public. In a short period of time, as police and public acclimatised to the lockdown, the early greater extent of enforcement – which did not involve large numbers – settled down significantly.

10

OFFICIAL

Complaints was another area where we looked at data. This provided further assurance in terms of our general impressions regarding use of the emergency powers. Findings here may reflect the relatively minor nature of complaints as well as greater willingness within Police Scotland to acknowledge mistakes and issue apologies in a situation involving new territory for us all.

- *The overall proportion of complaints resolved through FLR [Frontline resolution] in the two months prior to the lockdown was 42%. This increased significantly to 64% in the two months after lockdown. In other words, **more of the complaints received in the first two months of the lockdown period were resolved through explanation, apology and assurance than in the prior two months.** This suggests that the PSD NCARU was assessing a much higher proportion of all complaints received during lockdown as being non-criminal, minor or trivial in nature.*
- *Figure 28 presents the percentage of all complaints received during both periods in each Division that were resolved using FLR, ordered from highest to lowest in the post-lockdown period. It shows that **there was an increase in the proportion of complaints resolved within all Divisions after lockdown,** although the biggest increases tended to be in those Divisions that had a lower proportion of resolved complaints during the pre-lockdown period.*

(Section 5.2, Professor McVie's report)

- *The majority (71%) of all Operation Talla complaints were resolved through FLR, which suggests that they were primarily non-criminal, trivial and minor in nature. This is likely to explain the high level of resolution overall during the lockdown period.*
- *Overall, therefore, there is no evidence of a huge surge in complaints against the police as a result of the use of the emergency powers; no evidence of a systematic bias across Divisions in the number or rate of complaints received; and evidence to suggest that most of the Operation Talla related complaints were of a trivial and non-criminal nature.*

(Section 5.5, Professor McVie's report)

Compliance/enforcement realism has played an increasing role in finding a balance in operational policing. For example, as restrictions eased, it was expected that more people would be out in public spaces. This had obvious implications for Police Scotland with even more justification for a starting assumption that those outwith their homes were there with good reason or at least a reasonable excuse. That no doubt played a role in the marked reduction in enforcement.

Public attitudes

The various means of testing public attitudes, including surveys, continue to reflect significant support for the approach of Police Scotland to policing the pandemic.

“Normal” policing

As acknowledged in our first interim report, this is an area outwith our Terms of Reference, but it has been increasingly apparent that levels of demand have been returning to normal levels, requiring increasing prioritisation away from high visibility policing of the pandemic. This has coincided with the start of easing of restrictions in guidance and regulations, for example, increased exercise being permitted.

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.

- *Communicating with the public using the continuum of the four Es has been effective in maintaining the fundamental principle of policing by consent.*
- *There was sufficient information in the briefings and guidance to enable officers and staff to deal competently with issues arising from the restrictions*

(key findings in HMICS Report).

Communications – guidance/regulations

In general, it appears that the approach of Police Scotland in not being prescriptive in providing a list of “do’s” and “don’ts” has worked well although, as we stated in our first interim report, some individuals and groups would have preferred greater specification and detail (autistic people being one example).

It is impossible to reflect on this area during phase 1 without mentioning Dominic Cummings and his infamous trip to Durham, including the extraordinary account of testing his eyesight by driving for 25 miles to Barnard Castle with his partner and young child in the car.

In what may have been a reference to Mr Cummings, one respondent posted on the portal:

I think it's been very difficult for the Police to enforce the new powers as government guidance is too vague & government officials have not been sticking to the guidance so are not leading by example.

In seeking to defend Dominic Cummings, the UK Government gave up on the often blurry (although not always unhelpful for the key public health messages) distinction between guidance and regulations. While there may not have been a breach of the regulations, the claim that he acted “responsibly, legally and with integrity”⁵ could be made only by ignoring the guidelines and most of the previous messaging from government. In the aftermath of that episode, it was apparent that public confidence had been shaken because of the understandable perception that different “rules” applied to different people. Mention by the Prime Minister and others of apparently wide discretion on the part of individuals as regards compliance, used to justify what seemed to be a catalogue of breaches of guidance (and, understandably, never a feature in communications till that point), created confusion where there had been a degree of certainty.

⁵ <https://www.theguardian.com/world/live/2020/may/24/uk-coronavirus-live-dominic-cummings-under-intense-pressure-over-lockdown-breaches>

In Scotland, a similar example, involving the former Chief Medical Officer, was handled very differently, including by Police Scotland, and may have helped to reinforce the essential message from early lockdown in Scotland that “we are all in this together”.

The suggestion that a high profile example of someone choosing a very different interpretation of guidance than most others would lead to increased flouting of the regulations seemed unlikely although it is fair to say that it added to confusion on the part of the public as well as deep resentment, given the enormous sacrifices made by countless other “ordinary” individuals who complied in letter and spirit with the guidance as well as the regulations.

Transitions and Differentiation

- *Concerns were raised that as restrictions continue to alter, the role of the police will become more challenging, and clear guidance for the police and the public will be required.*

(key findings in HMICS Report).

Some of the challenges of transitions have been apparent in recent weeks as the Scottish Government started the easing of restrictions. Easing has been heralded by large groups gathering in beauty spots, beaches, parks and other public spaces, sometimes, but not always, making an effort to maintain 2 metres of social distancing, wearing masks or taking other precautions. Increasingly, local authorities and others will have to play lead roles in “policing” the remaining restrictions. This may be particularly so if, as has been suggested by the UK Government and First Minister, there have to be localised restrictions based on the rate of transmission of infection in particular parts of the country. Even then, it seems likely that Police Scotland may still have to retain a role, even if increasingly as part of backstop arrangements for enforcement.

Clear messaging and communications are obviously crucial in transitions. One respondent commented on this in the portal:

I thought that the announcement by Malcolm Graham at the start of Phase 1 of lifting lockdown was really welcome. He made it clear that the police would aim to be proportionate in any intervention on COVID

and use the powers in a permissive and sensible way rather than being heavy handed and restrictive.

The transitions have seen Police Scotland move out of the spotlight as regards policing the pandemic and back into a more normal space in which efforts continue to police during the pandemic while expanding the use of new methods such as CAM (Contact Assessment Model) which allows risks to the public and police officers to be assessed having regard, among other things, to the virus.

The Work of the IAG

The Group has continued to meet, by suitable electronic means, twice a week, since our first interim report. The frequency of meetings was arranged to enable the sort of dynamic review originally discussed between Police Scotland and the Scottish Police Authority, meaning that the Group is able to provide assistance and guidance on matters as, or shortly after, they arise in still changing circumstances, especially transitions from early lockdown restrictions. Much work has also been done in between meetings by way of telephone calls and email exchanges between Group members, members of the SPA Board and staff (the SPA providing the Secretariat and support for the work of the IAG), and senior officers at Police Scotland.

The Group has continued to involve and seek to hear the voices of community and grassroots representatives, advocates and activists.

This has been done by use of personal contacts and networks, letters, emails and social media. We have made it clear that we want to hear from people with their experience and views on the use of the emergency powers.

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

The IAG Chair has continued discussions with relevant individuals who are looking at aspects of policing during the pandemic in other countries, for example, Counsel and the Special Adviser to the Joint Committee on Human Rights (JCHR) at Westminster⁶.

Work Programme

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

Evidence

As outlined in our first interim report to the SPA Board, we have been seeking evidence of different sorts to allow us to assess human rights compliance by Police Scotland in its exercise of emergency powers. This has involved data and other evidence from first-hand personal accounts and testimony (from the public and within policing), general views and impressions, and public surveys. Our aim has been to look at it all to inform views and recommendations. In some ways, looking at data is simpler (especially when explained by Professor McVie), although even with data, understanding context is crucial as data without context can be misleading.

We are interested in a number of issues, including fairness, one of the Police Scotland values. Trying to assess fairness can be more difficult and it may evade capture in data. That is why the lived experience accounts of individuals can help to bring alive some of the implications of

⁶ The JCHR is still conducting an Inquiry and receiving evidence on the human rights implications of the UK Government's response to COVID-19, albeit wider than the issue of policing. It is expected to report in September 2020.

<https://committees.parliament.uk/work/218/the-governments-response-to-covid19-human-rights-implications/>

the data. We have reached out for this using various means, including a public portal and interviews with police officers and other Police Scotland staff, as well as reaching out through our own networks, both formally and informally. Dr Catriona Stewart has issued a survey using her Scottish Women's Autism Network networks and Tressa Burke and Brian Scott have done the same using Glasgow Disability Alliance networks. Their groups are still working on analysis of responses and will feed all relevant findings into the IAG. CYPCS has been engaging with children and young people both directly (through the Commissioner's Young Advisors) and indirectly (through the work of the CYCJ) to gather relevant views and experiences the first stages being reflected in the annexed Briefing.

Some evidence that we have seen highlights the issues of inequality which we mentioned in our first report. It is clear that, for many, the policing of the pandemic has been the least of their concerns. Health (physical and mental), bereavement, food, money, jobs – all of these and more have been more pressing matters for many than issues of policing the pandemic.

In addition to these issues of inequality, reported statistics show that BAME communities are disproportionately impacted by the COVID-19 crisis.

These are features of the disease which should inform all discussions about its impact.

Public portal

This went live on 1 June 2020. As at 26 June 2020, we have received 50 responses. The 40 responses received as at 16 June were analysed by Professor McVie and are included in her interim data report. The portal is due to remain live until 1 September 2020, just shortly before the emergency powers are due to expire. Respondents are invited to offer their thoughts and impressions on the use of the emergency powers, and to state any factors they thought led to their being treated unfairly or differently. This allows us to reflect on paragraph 5 of our Terms of Reference. The portal is not a survey but responses so far offer a broad assurance and are generally in line with public surveys. IAG members take regular opportunities to publicise the portal.

OFFICIAL

As yet, there have been no responses submitted to the portal from children under the age of 18 and CYPCS will therefore increase engagement with wider children and young people networks, organisations, and through social media.

Respondents have shown an appreciation of the precarious nature of the frontline of policing the pandemic, as well as appropriate handling of situations:

- *Police Officers have put themselves at risk to protect the health of our nation - is that really a police job? The fact that they've done it shows compassion and kindness.*
- *During lockdown, the police have been visible but have handled any situation I have seen in a calm and professional manner. They have not been heavy handed.*

Some have praised the exercise of discretion, for example, offering reassurance about travelling more than 5 miles where that was necessary for shopping in rural areas.

Others were unhappy at a perceived lack of enforcement:

Additional powers are utterly futile if there is an unwillingness to use them.

Another suggested that the police approach was too lenient and made a radical suggestion as to how this might be addressed:

If people flout lockdown guidelines I believe the guideline should be made a law and the person punished. I would support the increased use of the police and army to enforce lockdown. I would support these measures to increase the speed at which we can return to a more normal society. I would support marshal law.

We continue to receive weekly reports on responses from our secretariat. Any matter thought to require earlier attention is brought to the attention of the Chair.

Police Scotland Interviews

From the outset of our work, we have wanted to ensure that we heard views not only from members of the public but also from within policing. Indeed, it is an explicit part of our Terms of Reference⁷ – see TOR paragraph 4.

The Chair of the IAG has had conversations with senior office-bearers in the Scottish Police Federation as well as the Association of Police Superintendents in Scotland. We have also had the opportunity of direct discussion with several 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 have met with the Gold Commander, DCC Graham, for an overview and discussion. We also met with ACC Higgins who has responsibility for key aspects of transitions.

In addition, we wanted to hear direct from police officers and other response staff at Police Scotland. Given the current restrictions and operational demands, we wanted to do this in as unobtrusive a manner as possible. We were also keen to hear from officers quickly to allow us to hear from those in policing at the same time as we were hearing from the public in various ways, including the public portal. IAG member, Gill Imery, Her Majesty's Chief Inspector of Constabulary in Scotland, kindly offered her staff to carry out the interviews. These were carried out between 1 and 5 June 2020. The report on these interviews is included with this overview of progress in the work of the IAG. We are grateful to Gill for her assistance, Brian McNulty and the HMICS team for carrying out the interviews and Superintendent Alison Kennedy and Inspector John McSorland (Police Scotland) for helping with arrangements, as well as the Divisional Commanders for facilitating the interviews and the individuals who agreed to be interviewed.

Data

For some time, enforcement data has been published by Police Scotland⁸. As a group, we were keen to understand this data as fully as possible, and access other relevant data, for example, relating to complaints and identifying, in general terms, those who had been

⁷ Appendix A

⁸ <https://www.scotland.police.uk/about-us/covid-19-policescotlandresponse/enforcement-and-response-data>

subject to enforcement. This has involved additional work, in particular by Police Scotland. We have tried to obtain as much context as possible to try to understand the answers to some questions prompted by the data. In this area, the assistance of the OpTICAL group has been invaluable.

OpTICAL (Operation TALLA Information, Assurance and Liaison Group) is the Police Scotland group chaired by Assistant Chief Constable Gary Ritchie. It has been meeting on a weekly basis since 20 April. IAG Chair John Scott and IAG members Professor Susan McVie, Martyn Evans and Ephraim Borowski are also members of the OpTICAL Group. This has allowed direct communications around data requests and an understanding of the limits of what is available from the Coronavirus Intervention System (“CVI”) established by Police Scotland to collect information on police activity in relation to the pandemic. One limitation of CVI, for example, is the inability to provide disaggregated data on policing of under 18 year olds and the ongoing use of the Police Scotland interim Vulnerable Persons Database for all ‘vulnerable’ children, young people and adults who come into contact with police during the pandemic.

The purpose of OpTICAL is:

- to provide strategic oversight of information and data gathering under Operation TALLA to support Divisional Commanders in the operational approach
- meet internal and external demands for information
- monitor assurance processes to maintain public engagement, proportionate use of police powers and advise divisional commanders as appropriate regarding approaches and best practice
- maintain oversight of community impact, equality and human rights considerations and any special considerations required to mitigate issues identified including access to the National Independent Strategic Advisory Group (NISAG)⁹
- provide liaison function with the IAG.

⁹ 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.

OFFICIAL

It is hoped that OpTICAL will continue to operate, assessing and responding to changes in government policy and, ultimately, concluding its work at the end of the crisis. It appears to us, however, that OpTICAL could assist with the move into Recovery phase and 'after action' considerations including review and learning.

Professor McVie's interim report on data is comprehensive, pulling together various datasets already mentioned, and outlining further data which is still being sought, together with timescales for that. We hope that this ongoing work will assist in considering whether the police use of the powers has disproportionately impacted on particular groups within the population, for example, ethnic minorities.

Professor McVie's report will be the subject of further discussion at the IAG as much of the data became available with analysis only recently.

Human rights - protests

IAG colleagues in the SHRC have contributed to our work in a number of ways but including the preparation of the annexed paper on relevant human rights considerations in the policing of the pandemic. This has become particularly important given the recent protests of, and in support of, the Black Lives Matter movement, as well as counter-protests and related activity – see paragraphs 28 to 30 of the paper.

Albeit Police Scotland have not used their emergency powers to prevent protests taking place, we have looked at the policing of protests in the pandemic. It is, naturally, a sensitive subject, with the familiar need to balance various rights along with the public health mandate for Police Scotland in the emergency legislation. It is another area of some controversy, with some challenging the police for a perceived lack of action to prevent or restrict any gatherings, while others complained of the extent of police presence and activity. Much of the police activity around protests has involved engagement with community and other groups as well as aspects of public order policing. It is an example of a situation where government has provided emergency powers which may conflict with other rights and duties. In such a situation, unless government stipulates which legislation is to be given priority, it is a matter for Police Scotland in the exercise of its operational independence to decide on prioritisation, having due regard to human rights considerations.

We recognise that it is a difficult balance and one that is bound to leave some unhappy with where it has been struck.

For our part, we consider that the decision to encourage online protests while not seeking to prevent gatherings was correct. While some of those involved in disturbances and disorder may simply have been using the protests as an excuse, some of the issues being protested are important and represent a justifiable departure from strict enforcement of aspects of the regulations, in particular around the size of gatherings.

We will continue to look at the policing of protests in a pandemic with a view to offering further thoughts in our final report.

Impact on children and young people

IAG colleagues in the CYPCS have also contributed to our work in a number of ways. Maria Galli produced the excellent annexed paper, emphasising some of the key human rights considerations as regards children and young people in the context of the policing of the pandemic. This was intended to support the scrutiny and monitoring of the IAG and was informed by their work and engagement with stakeholders, partners, civil society, families, and importantly, children and young people since the outset of the emergency period.

CYPCS are also working with children's sector organisations, including the Centre for Youth and Criminal Justice at the University of Strathclyde ('CYCJ') who are consulting with children and young people with lived experience of the criminal justice system during the pandemic. CYCJ published an initial report which is annexed to the CYPCS Briefing. CYPCS has commissioned the Observatory of Children's Human Rights Scotland to conduct an Alternative Children's Rights Impact Assessment coronavirus law and policy in Scotland¹⁰. Submissions to the Observatory will feed into the work of the IAG insofar as relevant.

This will also assist us in relation to paragraph 5 of our Terms of Reference.

¹⁰ <https://cypcs.org.uk/coronavirus/how-are-scotlands-coronavirus-policies-impacting-children-and-young-people-our-alternative-childrens-rights-impact-assessment-aims-to-find-out/>

One issue mentioned in our first interim report related to the legislative anomaly in the availability of Fixed Penalty Notices for use on 16 and 17 year olds. This provision was amended on 26 May 2020¹¹ following work by the CYPSCS which was supported by the IAG and Police Scotland. This helped to ensure that ‘children’ under 18 in Scotland have parity of international human rights safeguards.

Gaps in powers

This is an aspect of our Terms of Reference – see TOR paragraph 7 - which has been the subject of only a small amount of discussion to date. Considering the extent of the extraordinary new powers available to Police Scotland, we have not thought it a priority to look at what additional powers would be necessary to police the pandemic effectively. Nonetheless, it is a matter which has come to our attention and has been the subject of comment by Police Scotland, for example, in relation to the absence of a power of entry to premises associated with regulations restricting gatherings inside¹².

Giving the police a power of entry associated with the emergency powers would, we think, have adversely affected the delicate balance struck when introducing the lockdown and had the potential to adversely affect the still crucial principle of policing by consent. Powers of entry are generally associated with serious crime and may have seemed out of place in what was, in effect, public health policing. In any event, we understand that police officers usually succeeded in using their soft skills to address those situations where proscribed indoor gatherings were occurring.

The Road Traffic Act 1988 gives police officers in uniform the power to stop vehicles. This power could have been used in the policing of the pandemic. However, no specific power to stop vehicles was given as part of the lockdown regulations. The Chief Constable made it clear that he would not expect vehicles to be stopped routinely to check, for example, how far people had travelled. Enforcement data tells us that

¹¹ Coronavirus (Scotland) (No 2) Act 2020, Part 1.

¹² See, for example, paragraph 33 of Her Majesty’s Inspectorate of Constabulary in Scotland (“HMICS”): Independent Advisory Group Report on Interviews with Police Scotland Officers and Staff

some individuals did receive fixed penalty notices for lockdown breaches after they had travelled from England to Scotland but it seems likely that they came to the attention of the police for other matters first, for example, road traffic offences.

Impact assessments - Community Impact Assessment, Equality and Human Rights Impact Assessment and Child Rights and Wellbeing Impact Assessment

Looking at these documents is another aspect of our Terms of Reference – see TOR paragraph 8 - which we have chosen not to prioritise thus far, given the key role of additional real-time oversight set out in paragraph 1. In any event, the Child Rights and Wellbeing Impact Assessment is still under development, being worked on by IAG colleagues from the CYPCS and Police Scotland.

We will look at these documents over the next few weeks, reflecting on the role played by such impact assessments in a rapidly changing policing context. Their benefit may be in stress-testing them against sudden shifts in policing responsibilities and priorities.

Spit hoods

Naomi McAuliffe, IAG member who is also Programme Director at Amnesty International in Scotland shared correspondence with the IAG received from Police Scotland in which it was stated explicitly that spit hoods are not being used in Scotland in connection with Covid-19.

Quarantine regulations

During the last month, there has been one increase in restrictions which had the potential to involve Police Scotland in enforcement, namely the quarantine regulations. These were brought into force the same day as very similar regulations elsewhere in the UK. In fact, they appear to have been largely copied from the regulations for England. The draft regulations for England¹³ were published on Wednesday 3 June 2020 to come into force on 8 June 2020. The almost identical Scottish

¹³ The Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020

OFFICIAL

regulations¹⁴ were published only on Sunday 7 June 2020, less than 24 hours before they were to come into force and before being laid at the Scottish Parliament because “*the Scottish Ministers consider that these regulations need to be made urgently, without a draft having been laid before, and approved by resolution of, the Scottish Parliament.*”

Late sight of the final draft of the regulations meant that Police Scotland were still working on guidance to officers 24 hours after the regulations came into force¹⁵, although the Chief Constable has subsequently explained in some detail the process and consultation with Police Scotland that led to the regulations¹⁶.

Despite this consultation, what I have described is no way to legislate, even in what might still be described as a crisis. Debate is possible about the extent to which the original emergency provisions had to be introduced in a rush and without scrutiny. To an extent that depended on the complex interplay between devolved administrations and a UK Government that has been criticised for acting too slowly. Perhaps earlier action would have allowed a little more time for scrutiny, looking at the core issues as well as weeding out errors and omissions.

Over two months into lockdown, the same justification for urgent legislative action without scrutiny appears much weaker. Publishing new regulations with additional restrictions and new powers of enforcement should be done in a way that allows those involved in enforcement, as well as the public, the time to fully digest their new responsibilities and duties. It should also be done in a way that maximises the opportunity for parliamentary scrutiny. At a minimum, this should involve sharing the key provisions with enough time for everyone to read and understand them fully before implementation.

An additional specific issue for children and young people is that there was again no consultation with CYPCS, nor a Children’s Rights Impact Assessment done on the new regulations, as committed to by the Scottish Government. Further, the regulations have ignored the current

¹⁴ The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020

¹⁵ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12687&i=114771>

¹⁶ https://www.parliament.scot/S5_JusticeCommittee/Inquiries/20200619PoliceScotlandtoJFCovid19.pdf

OFFICIAL

ongoing debate and calls from CYPCS that all provisions MUST be compliant with international human rights law and define a child as a person under the age of 18 years. These regulations again fail to recognise that 16 and 17 year old Scottish children have the same human rights all UK children.

It has been made clear that Police Scotland were to have very much a backstop role in enforcement of the quarantine regulations which were to be enforced primarily by Border Force in conjunction with Public Health Scotland (“PHS”). In their current form, these regulations may be an example of message legislation as, even for Border Force and PHS, the regulations appear almost unenforceable, relying to an even greater extent than usual on individuals to be trusted to comply.

While the contents of, and procedures for introducing, emergency powers for Police Scotland are not within our Terms of Reference, questions of how the powers are enforced, including issues of compliance/enforcement realism are. In addition to our concerns about the way the quarantine regulations were introduced, they lack compliance/enforcement realism.

I appreciate that it would have seemed odd for Scotland not to have introduced equivalent provisions, and that it appears to be the UK Government which came up with the idea, but it is perhaps an example of legislation best used as a model of how not to do things in terms of process, timing and content. It therefore fails to follow a human-rights based approach. In relation to children, the Scottish legislation is worse because of repetition of the failure to recognise that children are all those under 18. The view of CYPCS is that this is discrimination and a failure by the Scottish Government to comply with ECHR Article 14 and UN Convention on the Rights of the Child (“UNCRC”), Articles 1 and 2.

It is important to bear these various concerns in mind as it appears that further thought is being given to the subject given recent developments with the disease in Scotland as opposed to England.

Future work of the IAG

The easing of restrictions may be the most significant factor in determining the remaining work of the IAG. As policing returns to its usual place, or the nearest possible approximation of it, the use of the

OFFICIAL

emergency powers will likely continue to reduce. At some point, subject to the course of the virus, the emergency powers will be revoked or allowed to lapse (as they will, unless otherwise confirmed, at the end of September 2020).

At that stage, our work will not be complete but it will change. The plan is to provide a final report offering such learning, comments and recommendations as might prove useful as part of retrospective analysis as well as preparation for any future need for similar restrictions and emergency powers. We see there being considerable advantages in such analysis as we have the benefit of real-time consideration of the key issues as opposed to simply a hindsight perspective.

In the meantime, our work has continued to develop as we have moved through different phases of the Scottish Government's Route Map. To date, we have maintained the twice-weekly meetings and this has worked well. We have had considerable input from Police Scotland and other experts, as listed in appendix B.

The IAG Chair met recently with NISAG. Subsequently, NISAG Chair, Ephraim Borowski, joined OpTICAL. This ongoing dialogue, the sharing of papers as appropriate and Ephraim's membership of the IAG, OpTICAL and NISAG allow matters of significance but outwith the IAG's Terms of Reference to be considered by another group offering expert advice to Police Scotland. It is another example of the sort of co-ordination which is encouraged within the work of the IAG.

Subject to any significant change in the direction of travel towards the easing of restrictions it is likely that we will review the frequency of our meetings, perhaps initially reducing to once per week. If the momentum towards easing continues thereafter, we will continue to work proportionately to address all aspects of the Terms of Reference.

Conclusion

In terms of the primary role of the IAG in the Terms of Reference, our recent work, bringing together a number of strands of data and other evidence, serves to confirm that use of powers by Police Scotland in general is compliant - 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 policing of protests has, in the event, not involved extensive use of emergency powers and therefore, strictly, falls outwith our remit, we consider that the general approach of Police Scotland to protests has given appropriate weight to the fundamental rights encapsulated in Articles 9 to 11 of ECHR (mirrored for children under 18 in Articles 13 and 14, UNCRC).

Finally, we are aware of similar work to that of the IAG which is being undertaken or considered in other countries. Discussions with colleagues in other jurisdictions, including England and Wales, continue to confirm the foresight of Police Scotland and the SPA in establishing the IAG to offer additional human rights-based oversight, scrutiny and real-time support and advice which offers additional confidence to the public in relation to the necessity and proportionality of action taken under the emergency legislation.

APPENDIX A

Terms of Reference

The Terms of Reference for the Group are:

1. To ensure that use of powers by Police Scotland is compliant - 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.

2. The powers which will be considered by the Group include the powers:
 - (a) relating to potentially infectious persons under section 51 of the Coronavirus Act 2020 and schedule 21 to the Act;
 - (b) to issue directions relating to events, gatherings and premises under section 52 of the Coronavirus Act 2020 and schedule 22 to the Act; and
 - (c) to enforce requirements to close premises and businesses and restrictions on movement and gatherings, all under Part 4 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.

3. The following are not within the scope of this review:
 - (a) the terms of the Lord Advocate's guidelines on the investigation and prosecution of crime, including liberation from custody and the reporting of offences;
 - (b) compliance by police officers with the Lord Advocate's guidelines on the investigation and prosecution of crime, including liberation from custody and the reporting of offences; and
 - (c) any specific case in which the police have taken action in respect of criminal offences under the Act and regulations.

4. To seek and take account of the views of police officers and members of the public in relation to the scope, clarity and use of the powers during the crisis period.

5. To pay particular attention to any use of powers involving children¹⁷, young people, or persons within disadvantaged communities including those with protected characteristics under the Equality Act 2010, to ensure that they are fully reflective of Police Scotland's duties.

6. To report to the Scottish Police Authority, as regularly and within structures as agreed to be appropriate, on Police Scotland's use of

¹⁷ For our purposes, we adopt the UNCRC definition of a child as "every human being below the age of 18 years".

OFFICIAL

these powers, and associated public communication and community engagement.

7. To assess, and highlight as appropriate, any gap in powers between the role of Police Scotland in responding to the pandemic and the statutory framework in which they operate.

8. To assess and comment on Police Scotland's process for managing and updating their Community Impact Assessment, Equality and Human Rights Impact Assessment and Child Rights and Wellbeing Impact Assessment in the context of the Coronavirus Crisis.

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 and 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.

OFFICIAL

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>Complete - COVID19IndependentAdvisoryGroup@spa.pnn.police.uk</p> <p>Circulated by IAG members to contacts and stakeholders</p> <p>Launched 1st June 2020</p>	

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
	Website presence and updates provided	Web presence established; updates aligned to reports to SPA Meeting notes are made available on the website following each report to the SPA Board	
Engagement	IAG members to reach out across their own networks to facilitate evidence gathering and support participation	Members continue to promote participation, via professional and community networks. Alternative access channels are now available to help combat digital exclusion. IAG Chair engagement and liaison with senior office bearers in the Scottish Police Federation and the Association of Scottish Police Superintendents.	Ongoing promotion to continue to gather public and stakeholder perspectives Continuing review of public feedback, and follow up action to address any gaps in participation

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
	<p>Engagement and information sharing with the National Independent Advisory Group (NISAG)</p>	<p>IAG Chair attended the June NISAG meeting.</p> <p>The IAG has agreed to build closer links with NISAG, 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>Data and Evidence Gathering</p>	<p>Options, key questions and sources of evidence are identified and aligned with terms of reference.</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>Continuing and extending data gathering and review to further build the group's evidence base and inform future reporting.</p>

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
	<p>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>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 regular contributors to OpTICAL.</p>	

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
Assessment of Human Rights Impacts	<p>D Quiroz (SHRC) leading on 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) leading on preparation of guidance note for IAG on human rights</p>	<p>Scottish Human Rights Commission (“SHRC”) 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>Children and Young People’s Commissioner Scotland (“CYPCS”) 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 may continue to look at the policing of protests in a pandemic with a view to offering further thoughts in its final report.</p>

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
	<p>implications of regulations for children and young people</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 reported 20th May 2020 included - 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>Further contributions</p> <p>22nd May 2020: Dr Megan O'Neill, University of Dundee, and SIPR Executive Committee</p> <p>Dr O'Neill emphasised</p> <ul style="list-style-type: none"> • The role of context in policing, which must be taken into account at both the macro and 	

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
		<p>micro level. Internationally, Scotland appears to be “ahead of the game” in responding to the Coronavirus crisis, supported by the policing by consent model. Other countries are often coming from a tradition of armed police enforcing restrictions.</p> <ul style="list-style-type: none">• The role of community policing. Respect, neutrality, transparency and giving individuals a voice in encounters with police are key strengths in policing’s community engagement. As lockdown restrictions ease and become more complex, clear messaging and building on core community policing skills will be key.• The concept of organisational justice, including evidence of the impact of perceived organisational justice on police interaction with the public. <p>29th May 2020: Fran Warren and Francesca Gualco, Scottish Government Justice Analytical Services.</p>	

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
		<p>Discussions focused on work to understand and learn from international policing approaches and responses to Covid-19.</p> <p>Discussion points included -</p> <ul style="list-style-type: none">• The 4 “E”s approach used in the UK, Republic of Ireland and New Zealand with variations in enforcement, has been held up as an example of good practice.• Internationally, the context is variable around policing style, community relations, and the extent to which technology is used to enforce lockdown. Some countries including France, Germany and the United States, have experienced some civil unrest related to fines and lockdown.• Further work is underway and will be published shortly, to inform the medium and longer term response as lockdown eases. This will draw on international examples of policing in jurisdictions which are further along the timeline of dealing with the pandemic, and focus on those most relevant for Scottish policing.	

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
		<p>1st June 2020: Professor Roger Halliday, Chief Statistician, Scottish Government.</p> <p>Professor Halliday leads the Scottish Government Scottish Government COVID-19 Corporate Analytical Hub.</p> <p>Professor Halliday detailed how data and data sharing is being used to support decision making, to improve outcomes for individuals and communities and further potential for this to inform the Covid-19 response.</p> <p>Recent strengthening of information governance processes has allowed data from a range of public partners to be brought together on an ethical basis, and with new infrastructure ensuring data is securely held. As a consequence, there is an ability to link data across several systems without compromising data security.</p>	

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
		<p>https://blogs.gov.scot/statistics/2020/05/28/our-response-to-covid-19/</p> <p>15th June 2020: Dr Liz Aston, Director of the Scottish Institute for Policing Research (SIPR)</p> <p>Dr Aston provided an overview of a range of research relevant to the work of the IAG. She highlighted her work on Our Blog: The Justice Stories for SCCJR, which offered early thinking about policing during a pandemic and publishes regular updates https://sccjrblog.wordpress.com/.</p> <p>Discussion points included -</p> <ul style="list-style-type: none">• the impact of the safety of the work force on police interaction with the public• the impact of organisational justice on managing day to day change, and evidence of the beneficial impact of organisational justice on how police deal with members of the public	

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
		<ul style="list-style-type: none"> • the benefits of an engagement based approach on public confidence • the strength of police relationships with communities in Scotland • the need for additional research on the impact of technology in mediating the relationship between police and public • the need for training to support engagement with diverse groups • the importance of building long term relationships between police and communities, and of understanding how to engage with specific groups • the need to demonstrate equity in how policing is delivered 	
<p>“Sounding board” for Police Scotland forward planning and communications</p>	<p>Ongoing role for group members, as representatives of civic Scotland, offering personal and professional</p>	<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>Ongoing challenges of transition period and easing of lockdown.</p>

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
	<p>expertise, and insight from across their professional and community networks.</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) in attendance to allow IAG discussions to assist in informing strategy, including Communications.</p>	
<p>“Real time” advice and guidance – to Police Scotland; and to wider stakeholders via professional and community networks</p>		<p>Real time contact with Divisional Commanders and has been established, 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>Completed – submission of open letter to Police Scotland from SWAN Scotland.</p>	<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</p>

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
		Supporting evidence and guidance from GDA to follow.	supporting evidence.
Identify any additional work priorities to deliver against TOR		<p>An initial review by the IAG Chair has been undertaken, and is reflected in forward planning for the IAG and the Chair's report to the SPA Board 30 June 2020.</p> <p>Areas identified in the TOR for future focus include Gaps in Powers, and Impact Assessments: Community Impact Assessment, Equality and Human Rights Impact Assessment and Child Rights and Wellbeing Impact Assessment.</p>	
Public reporting on progress	<p>Verbal report to SPA from IAG Chair 30 April.</p> <p>Written report to SPA board 20 May.</p>	<p>Complete</p> <p>Complete</p>	Progressing work programme and gather additional evidence to deliver against the Terms of Reference, for report to the SPA 19 th August 2020.

OFFICIAL

Work Stream	Actions	Status Update	Current Priorities
	<p>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 oral evidence from IAG Chair and Professor Susan McVie</p>	<p>Complete</p> <p>Correspondence pending</p> <p>In progress</p>	

OFFICIAL

OFFICIAL

Appendix C

Human Rights Guide to Examining New Police Powers in Response to COVID-19

OFFICIAL

OFFICIAL

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

June 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.

www.scottishhumanrights.com

Contact person: Diego Quiroz
0131 297 5750
diego.quiroz@scottishhumanrights.com

Table of Contents

Introduction	3
Human Rights	5
Table 1. Key elements for a Human Rights Based Approach to policing.....	7
The European Convention on Human Rights.....	8
Article 2 – the Obligation to Protect the Right to Life	8
Article 3 - The prohibition of torture, Inhuman, Degrading Treatment or Punishment.....	10
Article 5 – The Right to Liberty and Security of person.....	11
Article 6 - Due process and the Right to a Fair Trial	14
Article 8 – Right to Respect for Private Life, Home and Correspondence	15
Articles 9 to 11 – Democratic Freedoms.....	17
Article 14 - The Prohibition of Discrimination	18
Equality law	19
Human Rights Impact of the New Police Powers... Error! Bookmark not defined.	
Annex 1. The European Convention on Human Rights	27
Annex 2. International Human Rights Standards	28
A. Applicable treaties.....	28
B. Relevant non-binding standards published by human rights bodies in response to COVID-19	29

Introduction

1. The Scottish Human Rights Commission welcomes the commitment to safeguarding human rights outlined by the First Minister across the coronavirus response, especially the commitment to ensuring that any restrictions are justified, necessary and proportionate¹. Given the broad powers that are being conferred on Ministers, and the very limited (pre-legislative) scrutiny that emergency legislation receives, it is vital that this commitment is accompanied by appropriate scrutiny and reporting by external and independent bodies.
2. We welcome the establishment by Police Scotland, Scottish Government and the Scottish Police Authority of an Independent Advisory Group to review Police Scotland's use of new temporary police powers in the current health emergency (IAG). The group chaired by John Scott QC will report directly to the Scottish Police Authority. The key aim of the Commission, as a part of the group, is to ensure that human rights standards are duly considered throughout the life of the emergency powers by Police Scotland.
3. Policing and human rights protection are mutually supportive. Considering that police activities to a large extent are performed in close contact with the public, police efficiency is dependent on public support and respect for human rights.
4. Police Scotland is given considerable powers to enforce restrictions on movement and gathering under the Health Protection Regulations

¹ COVID-19 – A Framework for Decision Making, Scottish Government, March 2020. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/04/coronavirus-COVID-19-framework-decision-making/documents/coronavirus-COVID-19-framework-decision-making/coronavirus-COVID-19-framework-decision-making/govscot%3Adocument/coronavirus-COVID-19-framework-decision-making.pdf>

(and the subsequent legislation),² which more are likely to impact particular groups, including those living in poverty forced to go out to make a living, disabled persons, homeless people, ethnic and religious minorities, children in conflict with the law, women, children and LGBTI people in situations of domestic violence, the elderly and young people, migrants and refugees for whom daily economic activity is essential for daily survival³. Every effort should be made to address this impact and meet the needs of vulnerable groups. As the application, in practice, of those powers necessarily involves the discretion of individual police officers it is crucial that they are provided with appropriate guidance, training and equipment to deal with the current health emergency.

5. Police and other law enforcement measures should be guided by international human rights law and standards, in particular by the principles of:
 - the inherent respect for **human dignity**,
 - the principle of **legality**,
 - the principle of **necessity**,
 - the principle of **proportionality**,⁴
 - the principle of **precaution**,
 - the **rights of the detainees** in the provision of criminal justice, and
 - the principle of **non-discrimination**.

6. This guide outlines the human rights obligations and principles which must apply to police emergency powers, and will focus principally on the Human Rights Act 1998 (HRA) and the European Convention on Human Rights (ECHR). This paper aims to ensure that the analytical framework, the parameters of data collection and reporting by the Group cover compliance with the relevant human rights. It is hoped

² Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. The date of this review covers the law as of 25 May 2020.

³ Particularly those who are not entitled to claim public funds.

⁴ The proportionality concept does not apply to absolute rights such as Article 3.

that members will find this reference paper a useful tool to scrutinise the application of the new police powers and their potential impacts in Scotland. The paper is not an exhaustive list of human rights and is a work in progress due to the rapid changes in the current environment. The Guide focuses on the ECHR due to the enforceable nature of it in Scottish courts, and the significant time constraints in developing a full guide. A range of other international human rights treaties are also legally binding on public authorities in Scotland including the ICCPR, UNCAT, CRC, CRPD, CERD, and CEDAW. Reference to these and to other standards focused on COVID-19 are included in Annex 2. The Scottish Government is currently exploring how to add or incorporate some of these international treaties into Scots law.⁵

7. The first part of this guide is an overview of the key human rights that should be taken into account in relation to the use of the emergency police powers. This section also recommends a rights-based approach to be applied when using the new powers. The second part examines the new powers in relation to their impact on human rights. This second part can also be used to structure the data collected by the IAG on human rights terms - to be completed by the IAG. During the group discussions, Police Scotland has expressed an urgent need for real time advice and guidance on human rights. This guide is not intended to provide that advice but may offer a background for their strategic and operational decisions.

Human Rights

8. The HRA, which incorporates the ECHR into UK law, sets out the fundamental civil and political rights and freedoms that everyone in the UK is entitled to, and makes it unlawful for a public authority to act in a way which is incompatible with Convention rights. A range of

⁵ CYPSC is working on a separate framework for the IAG in relation to children and young people and the CRC.

other international human rights treaties are also legally binding on public authorities in Scotland including those in Annex 2 (A). In addition, the Equality Act 2010⁶ sets a number of general and specific duties for public sector organisations in relation to non-discrimination.⁷ These obligations, together with human rights standards emerging from international organisations, human rights treaty bodies and special procedures provide a legal and practical framework for the police (and public authorities) in their use of the new emergency powers. We are going through an exceptional health emergency situation and even in this most difficult circumstance, the adherence to the rule of law in a democratic society should be unconditional.

9. The current health emergency adds new challenges to everyday policing, so it is also crucial to ensure that there is greater transparency and greater public participation, including with children and vulnerable people around the use of policing. It is vital Police take appropriate and heightened precautionary measures, and conduct context-based assessment of whether the use of force is necessary and proportionate. The public must have clear information as to what the police powers are and what is expected of them under the legislation and/or as a matter of public health guidance.⁸ It is

⁶ Together with the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012; Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015; and Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016.

⁷ We are not providing an Equalities framework tool with this document. EHRC is part of IAG and will provide advice on EA issues. There are a number of UK laws which are also relevant here for example General Data Protection Regulation, which covers the use of personal data. It is also important to note that a significant shift is taking place in the way government and private companies interact with each other. This is largely positive but present also challenges in terms of accountability and legitimacy. This is even more visible in the context of the current health emergency. For example on developing AI tools for policing and health purposes, vaccines, PPE and medical equipment, primarily due to technological developments and investment from private actors. However, very little attention has been paid to the issues of corporate responsibility. There is a legitimate public expectation that private actors (e.g. business enterprises dealing with the issues above) need to comply with all applicable laws and respect human rights. For more information see: UN Guiding Principles on Business and Human Rights.

⁸ Measures relating to the pandemic also have a significant impact on other internationally protected rights such as the right to health (Article 12 International Covenant on Economic, Social and Cultural Rights), in terms

crucial the public understand the temporary nature of the restriction and police powers. The use of emergency powers by the police must be at all times consistent with the human rights framework (a list of international standards in relation to policing are included in Annex 2 to this document). Police Scotland already includes important human rights as part of their values.⁹

10. Another important point for Police Scotland is the manner in which it approaches policing. Every policy, training exercise and operational application of (new) powers and duties should begin with a consideration of the rights at issue. A human rights based approach to policing will ensure that the rights of individuals and society are fairly balanced and protected and that the state is complying with its legal obligations. A rights based approach is also a powerful tool for the Police in terms of capacity, ability and independence. Policing with a human rights based approach guarantees that it is not subject to the whim of politics or power but beholden to and protective of the rule of law. Public confidence in policing is more important than ever.

Table 1. Key elements for a Human Rights Based Approach to policing.¹⁰

Participation	Everyone has the right to participate in decisions which affect them. Participation must be active, free, and meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.
Accountability	Accountability requires effective monitoring of human rights standards. For accountability to be effective

of which States must ensure that goods and services related to health are available, accessible, acceptable and of good quality.

⁹ See Police Code of Ethics: <https://www.scotland.police.uk/about-us/code-of-ethics-for-policing-in-scotland/>

¹⁰ This framework can also be used for the collection of data.

	there must be appropriate laws, policies, administrative procedures and mechanisms of redress in order to secure human rights.
Non-discrimination and equality	A human rights based approach means that all forms of discrimination must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most vulnerable situations who face the biggest barriers to realising their rights.
Empowerment	People should understand their rights, and be fully supported to participate in the development of policy and practices which affect their lives. People should be able to claim their rights where necessary.
Legality	The full range of legally protected human rights must be respected, protected and fulfilled. A human rights based approach requires the recognition of rights as legally enforceable entitlements, and is linked in to national and international human rights law.

11. For human rights protections to become practical and effective they must be monitored and reviewed. Data collection plays a useful and often essential role in creating effective human rights monitoring. Analysing data provides useful evidence for reviewing and improving operational responses by, for example, highlighting the perspective of victims and those in contact with the police. Independent monitoring mechanisms such as the IAG, NGOs, academics and NHRIs play a key role in this respect.

The European Convention on Human Rights

Article 2 – the Obligation to Protect the Right to Life

12. Article 2 safeguards the right to life and sets out the circumstances when deprivation of life may be justified.¹¹ This is one of the most fundamental provisions in the Convention which imposes a duty to protect life through taking practical steps to address situations where there is an identifiable and real threat to life, including from attacks by other private individuals.¹² Article 2 also means that the police needs to take preventive measures to minimise the risk to life posed by their operations.¹³ This is crucial as the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (the Regulations) allow for the use of force in the exercise of the new powers. For example the Police need to ensure people are not put at risk of COVID-19 when approaching, arresting, detaining and transporting individuals. Likewise, police officers should not be at risk when carrying out their jobs. In the context of Article 2, police officers should be provided with the appropriate equipment, training and guidance to comply with their legal duties and protect their lives as well as an appropriate level of priority COVID-19 testing.
13. The prohibition against arbitrary deprivation of life is non-derogable at all times, even in states of emergency, meaning it cannot be taken away or compromised.¹⁴ The breaking of a curfew or any restriction under the Regulations and the Coronavirus Act 2020 should not constitute grounds for excessive use of force by the police, and under no circumstances should it lead to the use of lethal force. In

¹¹ Article 2, see the Convention here: https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹² The action required must be reasonable without imposing an impossible or disproportionate burden on the authorities. Deprivation of life by the police will not be regarded as being unlawful when it results from the use of force which is no more than absolutely necessary for a specified aim which must, as properly interpreted, be to save life or prevent serious injury.

¹³ Ireland v. United Kingdom, (5310/71) ECHR 1 (18 January 1978) and Lopes de Sousa Fernandes v Portugal, (Application no. 56080/13). The State has positive obligations under Article 2 to take reasonable steps to minimise the risk to life posed by the current outbreak. In the context of Article 2 Police officers should be provided with the appropriate equipment, training and guidance to comply with their legal duties and protect their lives.

¹⁴ Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection. (Article 2(2)).

the event that a use of force by police result in death to any person, Article 2 also requires that there be an independent and effective investigation.

14. When Police use force under a state of emergency as the current one, they must continue abiding by the principles of necessity, proportionality and precaution in relation to Article 2 (and 3, see below).¹⁵

- **Necessity:** Law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties.
- **Proportionality:** Force used must be proportionate to the legitimate objective to be achieved by the new powers.
- **Precaution:** Reasonable precautions must be adopted to prevent loss of life in this emergency time. This includes putting in place appropriate guidance and command and control structures and ensuring medical assistance is available.

Article 3 - The Prohibition of Torture, Inhuman, Degrading Treatment or Punishment

15. Article 3 is an absolute guarantee which enshrines one of the most fundamental values of democratic societies. Article 3 includes no exceptions or limitations and no derogation from it is permissible, even in the event of a public emergency.¹⁶ As interpreted by the European Court of Human Rights, this provision involves not only obligations upon States to refrain from infliction of ill-treatment, but also positive duties to protect persons and to investigate effectively allegations of breach of this guarantee.¹⁷ There are clear implications of Article 3 for police in the context of the use of force when using the

¹⁵ Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings COVID-19 POLICE AND MILITARY USE OF FORCE IN A STATE OF EMERGENCY. Available in Annex 1.

¹⁶ *Chahal v the United Kingdom* (23 EHRR 413) 1996.

¹⁷ The application of Article 3 involves two specific issues. The first is the level of the treatment or punishment in question to come within the scope of Article 3. And the second is what is the appropriate label to be applied to the treatment or punishment: torture, inhuman or degrading.

new powers, in particular Regulation 7(1) which provides that a "relevant person" (which includes a constable) may take "such action as is necessary" to enforce any requirement or restriction imposed by the Regulations.

16. The use of lethal or potentially lethal force requires the exercise of restraint to minimise damage and injury as well as render assistance and medical aid at the earliest opportunity and notify relatives or other persons if a person has been injured (or killed).¹⁸ When Police use force, under the current health emergency, they must comply with the principles of necessity, proportionality and precaution in relation to Article 3. Any policy or approach to managing conflict in the current pandemic (e.g. 4 Es approach)¹⁹ should have a central statement of mission and values which recognises the need to protect and respect the human rights of all, regardless of their personal characteristic and status (Article 14).

17. Article 3 also includes a positive obligation on the police to take steps to seek to prevent the infliction of torture or ill-treatment by private persons or groups. This obligation could be very important during the current environment. For example, there is a positive obligation to promptly investigate allegations of rape and/or domestic or child abuse due to the lockdown, including with regard to children and other vulnerable individuals (elderly or LGBTI people), in order to prevent ill-treatment of which the police were or ought to have been aware.²⁰

Article 5 – The Right to Liberty and Security of person

¹⁸ Rehbock v Slovenia (App no 29462/95) ECHR 28 November 2000

¹⁹ Engage, explain, encourage and enforce.

²⁰ Opuz v Turkey, (Application no. 33401/02) June 2009 and MC v Bulgaria, (39272/98) December 2003. The obligation on the government in this context is to have a legal framework which provides appropriate protection for victims in the current circumstances of lockdown.

18. One of the most significant forms of interference with individual's rights is the police power to deprive an individual of her liberty. Article 5 guarantees the circumstances in which a person may be deprived of their liberty and the minimum rights to which they are entitled when deprived of it, including a right to compensation for unlawful deprivation of liberty.
19. Deprivation of liberty is an important tool in the current pandemic for police officers seeking to address the perceived risks posed by individuals to the community. In times of severe threat to the life of the community, it may indeed become one of the principal means of first response. Therefore compliance with Article 5 guarantees is particularly important when implementing the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 and the UK Act. For example, prolonged police custody or delayed judicial review of deprivation of liberty could lead to violation of article 5. This Article is also fundamental for the application of any other police powers given to the police in response to Covid-19. Police officers are given significant amounts of discretionary powers in the legislation, which includes prohibition notices, pre-trial detention, physical removal of persons and fixed penalty notices. It is also an offence to obstruct a constable exercising any function under the Regulations. A person who commits an offence under Regulation 8 is liable on summary conviction to a fine not exceeding the statutory maximum and Regulation 7(1) provides that a constable may take "action as is necessary" to enforce any requirement or restriction imposed by the Regulations and the Coronavirus Act 2020.
20. Article 5 protections do not only cover the power to deprive an individual of their liberty, but other issues such as conditions of detention in police cells or the manner in which a suspect is questioned – all of this very relevant in the current context (see annex 1 for the human rights standards). The European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (the CPT) considers that the period immediately after

deprivation of liberty is when an individual is most vulnerable.²¹ This consideration is crucial as today more than ever communication with the outside world is significantly restricted.

21. Any deprivation of liberty must be lawful or in accordance with the law, and further fall within one of the circumstances prescribed in the six sub-paragraphs of paragraph 1 of Article 5. It is important to note that not all of the grounds will be of relevance to police officers as the sub-paragraphs are designed to cover the whole range of circumstances in which State officials may feel compelled to deprive an individual of their liberty, including detention for the prevention of the spread of infectious diseases.

22. Under Article 5, key considerations for police officers include:

- Is the deprivation of liberty, ‘in accordance with a procedure prescribed by law’, this means it is based on a legal provision and free from arbitrariness.²² There will be a breach of Article 5 where a detention has taken place without legal foundation in Scots law. Government guidance is not enforceable, for example two-metre distancing, avoiding public transport or the wearing of face coverings in enclosed spaces is not based on law
- Is the detention permissible under Article 5? Article 5 recognises a number of grounds that may justify the use of deprivation of liberty. An exhaustive examination of all those issues is beyond the scope of this paper.

²¹ 6th General Report [CPT/Inf (96) 21], paragraph 15.

²² The lawfulness of any deprivation of liberty is tested both in respect of Scots law and also against European Convention to ensure it has not been applied in an arbitrary manner. ICCPR, article 2(3); UN Code of Conduct for Law Enforcement Officials article 2.

- Have the procedural safeguards provided in Article 5 been provided to the detainee? This includes the right to be informed promptly, in a language which s/he understands of the reasons for arrest and the requirement that a person detained is brought promptly before a judge. It is particularly important to ensure that children and other vulnerable individuals such as suspected victims of sexual or gender-based violence are protected by additional safeguards.

Article 6 - Due process and the Right to a Fair Trial

23. Article 6 guarantees that everyone charged with a criminal offence is entitled to certain protections, including the right to be presumed innocent until proven guilty, the right to a hearing with due guarantees and within a reasonable time by a competent, independent and impartial tribunal, and the right to have any conviction and sentence reviewed by a higher tribunal satisfying the same standards. Police officers play a key role in the task of investigating allegations of criminal behaviour. This includes a number of activities beyond detention such as interrogating suspects and witnesses, carrying out searches, undertaking surveillance, which seems to become a key element of the lockdown exit strategy, and generally securing evidence. As these aspects of police investigation practices take place within the context of a criminal process, they may have an important impact upon the fairness of a criminal trial under Article 6.

24. The questioning of suspects is a vital part of policing. However, this must take place alongside a recognition of the suspect's rights, including the right to silence and the right against self-incrimination and the rights of detainees while in police custody. An individual should have the right to have the fact of detention notified to a third party, to be offered access to a lawyer; and to be accorded access to a doctor. As mentioned above, this is particularly important in the current context, where police and NHS capacity may be

overextended. We also know that the number of people detained in custody is increasing and it is expected to increase in the coming months, so the role of monitoring mechanisms such as the independent custody visitors play a key function for the welfare of detainees throughout Scotland. Equally important are the complaint mechanisms to ensure improvement and protection against potential abuses and arbitrariness.²³

Article 8 – Right to Respect for Private Life, Home and Correspondence

25. Article 8 requires respect for private and family life, home and correspondence. These concepts are sometimes indistinguishable and cover the protection of the moral and physical integrity of the individual. Article 8 therefore encompasses a wide range of issues which are relevant for policing in the times of COVID-19. This include police powers to charge parents and detain children under the Coronavirus Act 2020 as well those related to surveillance technology. As Scotland/UK restarts the economy while containing the spread of COVID-19, track and trace technology will become one of the largest risks of the next phase of the pandemic response. The use of surveillance technology is by its nature intrusive.²⁴ If Police Scotland is going to use surveillance technology, for example use of drones, telecoms tracing or cyber and smart access, it is crucial that sufficient procedural safeguards and specification requirements are integrated, including diligent protection of the collected data, appropriate oversight over the use of the data, proportionality and

²³ Article 13, which was not included into UK law by the HRA, still has an important relevance for police authorities as it provides that “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

²⁴ See *S and Marper v the UK*, the European Court of Human Rights, which clarified some year ago that: ‘the protection afforded by Article 8 of the Convention would be unacceptably weakened if the use of modern scientific techniques in the criminal justice system were allowed at any cost and without carefully balancing the potential benefits of the extensive use of such techniques against important private life interests... The Court considers that any State claiming a pioneer role in the development of new technologies bears special responsibility for striking the right balance in this regard.’

limited duration of the adopted measures, and transparency about data collection, analysis, storage and deletion.²⁵

26. Article 8 is a qualified right, which means that any interference has to be justified:

- In accordance with the law: ‘requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law. The law must thus be adequately accessible and foreseeable.
- In pursuit of a legitimate aim: the must be based on one of the legitimate aims set out in Article 8(2), including ‘the protection of health or morals, the prevention of disorder or crime’ and ‘the protection of the rights and freedoms of others’, and be,
- Necessary in a democratic society: An interference will be considered ‘necessary in a democratic society’ for a legitimate aim if it answers a ‘pressing social need’ and, in particular, if it is ‘proportionate’ to the legitimate aim pursued.

27. There are no explicit powers to search a person or premises under the Regulations. However, if this happens due to the use of general police powers or new extra powers the decision to carry out (a form of electronic) surveillance, this will give rise to an interference with Article 8. Technological solutions such as deployment of drones, facial recognition and phone contact tracing triage are being deployed around the world to support health data analysis as well as analyse people’s movements.²⁶ While these applications such as the

²⁵ Both international and national courts have found that the blanket retention of biometric data is unlawful and constitutes an unjustified interference with the right to respect for private life, in violation of Article 8 of the ECHR . S and Marper vs the UK.

²⁶ The Scottish Government has set out plans to enhance existing contact tracing capacity across Scotland, and anticipate that up to 2,000 additional contact tracing staff will be required. The Digital Health and Care Institute are developing a secure web-based tool for the NHS in Scotland which will allow people to input details of those they have been in close contact with, and for these to be sent directly to contact tracing teams.

contact tracing app²⁷ can help prevent the spread of the virus, they can also have significant privacy and data protection issues.²⁸ It is important that contact tracing data is used for public health purposes only.

Articles 9 to 11 – Democratic Freedoms

28. In the past months our lives have changed. The coronavirus disease and its response have created extraordinary challenges for all, including significant implications for our democratic freedoms. These freedoms include the right to respect for freedom of expression, assembly and association, and freedom of thought, conscience and religion.²⁹ These freedoms are fundamental to the existence of a democratic society, where views, ideas and information can be exchanged and peacefully discussed.

29. While there is a general requirement to respect these rights and refrain from unjustified interferences, there may be situations where the police force is justified in doing so to enforce the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 and Coronavirus Act 2020. However, any interference with these rights must comply with a number of conditions (all) in the current pandemic, if it is to be consistent with the rule of law and the Convention. These conditions are:

- (i) the interference must be in accordance with the law;
- (ii) it must be in pursuance of a legitimate aim;
- (iii) it must be temporary; and
- (iv) it must be necessary in a democratic society.

²⁷ The app is already being rolled out on the Isle of Wight and is being developed by NHSX .

²⁸ Contact tracing apps have the potential to store a substantial amount of data around an individual's movements and social interactions, essentially creating a map of a person's private life. This data, if not properly regulated, could reveal a significant amount of detail about a person's private life and could be used in a number of ways. Although contact tracing apps are being developed in response to a public health crisis, it is not unforeseeable that data could be used for policing and immigration control.

²⁹ Freedom of religion (Article 9 of the ECHR), Freedom of expression (Article 10) and Freedom of Association (Article 11 of the ECHR).

30. There is significant case law of the European Court of Human Rights, making it clear that any decision to restrict the right to freedom of assembly must only be done in pursuance of a legitimate aim, on the basis of a lawful power and for reasons that are necessary in a democratic society. While courts will assess the circumstances for the interference, the police and other authorities are best placed to assess the feasibility of dealing with anticipated disorder in the current health emergency and take action in line with the principles above. There is also situations where the police are under a positive obligation to protect the exercise of these freedoms from attack by others, including private individuals.³⁰ Articles 10 and 11 represent one of the most important ways we can express peacefully disagreement with government action or inaction.

Article 14 - The Prohibition of Discrimination

31. Article 14 ensures that the enjoyment of the rights and freedoms in the Convention are secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth *or other status*. The principle of equality and non-discrimination is central to human rights law and is recognised as a norm in both the domestic and international framework. This principle is one of the foundations of Scottish society and Police Scotland should ensure that it is applied consistently when using the new temporary powers. It is worth noting that the application of the new powers may have a severe, unintended and inhibiting effect on particular individuals and groups, including those living in poverty forced to go out to make a living, disabled persons, homeless people, ethnic and religious minorities, LGBTI, children in conflict with the law, women and children in situations of domestic violence, the

³⁰ It is important to acknowledge that this will place great operational demands on the police.

elderly and young people, migrants and refugees for whom daily economic activity is essential for daily survival.

32. Addressing increased vulnerability and the consecutive risks to life and dignity must be integrated in the design and implementation of emergency regulations and policing across Scotland. Any measures having the purpose or effect of creating a difference in treatment (based on a prohibited ground), which is not reasonably or objectively justified, will be discriminatory.³¹ The UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Killings has recommended appropriate and heightened precautionary measures and context-based assessment of whether the use of force is necessary and proportionate to ensure compliance with this principle.³²

Equality law³³

33. The Equality Act 2010 makes it unlawful for service providers and those exercising a public function, including the police service, to do anything that constitutes discrimination, harassment or victimisation. The 9 protected characteristics under the Act include age, disability and race. Relevant forms of discrimination include: direct discrimination, indirect discrimination.³⁴ There is also a general duty on public bodies to have due regard to three 'needs' when exercising their public functions. These are to:

1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

³¹ *Abdulaziz, Cabales and Balkandali v The United Kingdom* (Application nos. 9214/80; 9473/81 and 9474/81) May 1985.

³² Guidance on the use of force by law enforcement personnel in time of COVID-19 emergency. United Nations Human Rights Special Procedures. Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings. April 2020.

³³ We are not providing an Equalities framework tool in this document.

³⁴ Direct discrimination and indirect discrimination can only be justified if the person seeking to justify the discrimination can demonstrate that their action was a proportionate means of achieving a legitimate aim.

2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 3. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
34. In Scotland additionally there are nine specific duties for listed public bodies to help them meet the general duty. They include assessing the impact of new or revised policies and practices on the needs of the general duty and reviewing existing policies and practices. More information can be found in the [Equality Act 2010 Code of Practice: services and public functions](#) and the [Technical Guidance on the Public Sector Equality Duty: Scotland](#)

II. Human Rights Impact of the New Police Powers

35. The UK and Scottish Governments have now introduced separate pieces of legislation in order to reduce the spread of coronavirus.³⁵ In Scotland, restrictions are mainly imposed by the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. The Regulations impose restrictions and requirements upon the general population and are the means by which current social distancing measures are legally enforced.³⁶ The legislation contains a range of new, temporary, police powers. This section will identify the key human rights which are engaged by the use of these powers. This section examines the law as of the end of May.

36. This analysis does not cover the Coronavirus Act 2020, which covers additional law enforcement powers relating to the removal of potentially infectious persons for screening and assessment, to enforce a quarantine, retention of fingerprints and DNA profiles and arrest without a warrant. The measures introduced by the UK government raise a number of human rights concerns, in particular the police powers to isolate potentially infectious persons and enforce movement restrictions that interfere with Article 5 and Article 8 of the Convention. Restrictions on gatherings potentially pose a threat to democratic freedoms (Articles 9, 10 and 11) and there is also impacts on the right to peaceful enjoyment of property (Protocol 1, Article 1 to the ECHR).

Fundamental rights	Police interference
Right to life	Any use of lethal force by police in the context of the Health Protection Regulations or the Coronavirus Act 2020.

³⁵ Coronavirus Act 2020; Coronavirus (Scotland) Act 2020; Coronavirus (Scotland) (No.2) Act 2020

³⁶ Police Scotland has a '4Es' approach to the enforcement of the Regulations: officers should engage, explain, encourage and enforce it.

	<p>A police officer may transmit or contract the corona virus or expose the public to it when they are approaching, engaging, arresting and detaining people.</p> <p>Regulation 7 (3b) Where a relevant person considers that a person is outside the place where they are living, the relevant person may remove that person to the place where they are living.</p>
<p>Prohibition of ill treatment and punishment</p>	<p>Arrest and custody, for example questioning.</p> <p>Regulation 7 (1) and (3) provides that where a constable considers that a person is outside their home the constable may direct the person to return there, or remove the person there.</p>
<p>Right to liberty and security of person</p>	<p>Any formal arrest, restrictions of physical movement of a certain duration. There is no power of search for offences committed under the Health Protection Regulations or the Coronavirus Act 2020.</p> <p>Regulation 5(1) provides that during the emergency period, no person may leave "the place where they are living" except to the extent to which a "defence" would be available under regulation 8(4 and 5). The list is not exhaustive: a reasonable excuse is not confined to the specific activities set out in regulation 8(5). The Regulations extends the period during which a child can be placed in secure accommodation without an order.</p> <p>Part 2 of Schedule 3 amend the Social Work (Scotland) Act 1968, the Criminal Procedure (Scotland) Act 1995 and the Adults with Incapacity (Scotland) Act 2000 in relation to vulnerable adults.</p>

	<p>A police officer could also be considering or dealing offences using any other power in the exercise of their duty. e.g. those under the Anti-Social Behaviour Scotland Act 2004.</p>
<p>Right to a fair trial</p>	<p>Any penalty based on criminal or administrative law, police investigations.</p> <p>A person who commits an offence under regulation 8 is liable on summary conviction to a fine not exceeding the statutory maximum.</p> <p>Regulation 9 provides that a constable may issue a fixed penalty notice to a person (over 16 years) who s/he reasonably believes has committed an offence under the Regulations.</p> <p>It is an offence to obstruct a constable exercising any function under the Regulations. Regulation 8, a person who contravenes a direction given under regulation 7, or fails to comply with a reasonable instruction or a prohibition notice given by a relevant person under regulation 7, commits an offence.</p>
<p>Right to private and family life, home and correspondence including data protection</p>	<p>There is no power of search of any person or place for offences committed under the Health Protection Regulations or the Coronavirus Act 2020. However, police officers can consider powers of entry under common law if required and existing legislation such as Section 54 of Civic Government (Scotland) Act 1982.</p> <p>A police officer may transmit or contract the corona virus or expose the public to it when they are approaching, engaging, arresting and detaining people.</p>

	<p>A police officer could also be considering or dealing with offences using any other power in the exercise of their duty. e.g. those under the Anti-Social Behaviour Scotland Act 2004.</p> <p>Under regulation 7(6) If a constable believes that a child is repeatedly failing to comply with the restriction in regulation 5(1), the parent or person responsible for the child may directed to secure, so far as reasonably practicable, that the child complies with that restriction.</p> <p>Child assessment orders, child protection orders and compulsory supervision orders. In particular, the regulation increases the periods of time such measures can be in place for and when they are to be reviewed</p> <p>Regulation 8, a person who contravenes a direction given under regulation 7, or fails to comply with a reasonable instruction or a prohibition notice given by a relevant person under regulation 7, commits an offence.</p> <p>Stop and search, video or communication surveillance (drones, face recognition and tracing app), use of biometric data to profile potential suspects, identity check, search of private premises and processing of personal data, data mining</p>
<p>Right to freedom of Religion, Expression, Association and Assembly</p>	<p>Regulation 6 provides, subject to exceptions, that no person may participate in a gathering of more than two people in a public place.</p> <p>Regulation 7(9) provides that where a constable considers that three or more people are gathered in contravention of regulation 6, s/he may direct the gathering to disperse, direct any person in the gathering to return home, or remove any person in the gathering to their home.</p>

	<p>Regulation 8(5) lists numerous activities which would amount to a reasonable excuse for leaving one's home or participating in a gathering of more than two.</p> <p>Powers to enforce two meter distancing rules (guidance rather than law), including in the work place, police powers to isolate potentially infectious persons and enforce movement restrictions may interfere with these rights.</p> <p>Ban or dissolving demonstrations by police.</p> <p>Part 2 of Schedule 6 relates to Freedom of Information and amends the Freedom of Information (Scotland) Act 2002, which may impact police FOIs. (this change will be removed by the new legislation).</p>
--	---

Annex 1. The European Convention on Human Rights

Annex 2. International Human Rights Standards

A. Applicable treaties

Instrument	Date	Date of ratification by the United Kingdom	Into force
ECHR European Convention for the Protection of Human Rights and Fundamental Freedoms	4 November 1950	8 March 1951	3 September 1953
ICCPR International Covenant on Civil and Political Rights	16 December 1966	20 of August 1976	23 March 1976
CEDAW Convention on the Elimination of All Forms of Discrimination Against Women	18 December 1979		
CAT UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	December 1984	7 January 1989	26 June 1987
CERD UN Convention on the Elimination of All Forms of Racial Discrimination	21 December 1965		
CRC UN Convention on the Rights of the Child CRC	20 November 1989	15 January 1992	2 September 1990
UN CRPD The Convention on the Rights of Persons with Disabilities	13 December 2006		

B. Relevant non-binding standards published by human rights bodies in response to COVID-19

Body	Title of publication	Date of publication	Themes relevant to policing or detention
UN Secretary General	‘We are all in this together’ Human Rights Policy Paper	24 April 2020	<ul style="list-style-type: none"> • The role of law enforcement in fighting the disease and protecting population. • Ensuring law enforcement is maintained to protect the most vulnerable • Ensuring heavy-handed security responses do not undermine health responses • Misuse of COVID-19 directives to target minority groups • Restrictions on freedom of movement • Treatment of racial, ethnic and religious minorities
Office of the High Commissioner for Human Rights	COVID-19 Guidance	March 2020- updated regularly	<ul style="list-style-type: none"> • Emergency measures- powers only to be used for legitimate public health goals • Rights which cannot be restricted, even in state of emergency • People in detention and institutions • Countering rise of xenophobia and racism • Privacy • Trafficking
Joint Treaty Body Statement	Statement in response to COVID-19	24 March 2020	<ul style="list-style-type: none"> • Protecting against racism and xenophobia • Restrictions relating to freedom of movement, peaceful assembly and privacy must be undertaken on with valid legal framework- exceptional, temporary and strictly necessary and justified
Committee on Economic, Social and Cultural Rights	Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights	7 April 2020	<ul style="list-style-type: none"> • Need for law enforcement officials to respond to cases of domestic violence and that access to justice is available.
Committee on the Rights of the Child	Statement	8 April 2020	<ul style="list-style-type: none"> • Protection of vulnerable children whose vulnerability increased by the exceptional circumstances- including children deprived of their liberty or confined in police

			<p>lock-up facilities, prisons, secure care etc.</p> <ul style="list-style-type: none"> • Release of children from all forms of detention where possible and provision with means of regular contact to families for those that cannot be released • Preventing arrest and detention of children violating state guidance relating to COVID-19
UN Sub-Committee on the Prevention of Torture	<p>Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic</p> <p>Advice on compulsory quarantine for COVID-19</p>	<p>25 March 2020</p> <p>31 March 2020</p>	<ul style="list-style-type: none"> • Prohibition of torture, cruel and inhuman or degrading treatment or punishment cannot be derogated from, even during exceptional circumstances and emergencies. • It confirms that places of quarantine fall within the visiting mandate of the NPM, although access may be restricted temporarily for strictly limited reasons and not on the basis that it is a place of quarantine. <p>It also highlights that quarantine should not result in ill-treatment of those detained</p>
Council of Europe Secretary General	<p>Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states</p>	7 April 2020	<ul style="list-style-type: none"> • Police detention • Prolonged police custody or delayed judicial review of deprivation of liberty could lead to violation of article 5. • Privacy and data protection • Protection from crime and protecting victims of crime e.g. domestic violence, trafficking, sexual abuse • Cyber Crime
Commissioner for human rights at the Council of Europe	<p>Privacy in relation to COVID-19 measures</p>	1 May 2020	<ul style="list-style-type: none"> • Privacy- use of technology to monitor citizens • Human rights compliant surveillance- adequate legal safeguards and independent supervision
European Committee for the Prevention of Torture (CPT)	<p>Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease</p>	20 March 2020	<ul style="list-style-type: none"> • legal basis for restrictive measures • Fundamental safeguards against ill-treatment of persons in custody must be upheld

	(COVID-19) pandemic		
Fundamental Rights Agency (FRA)	Coronavirus pandemic in the EU: Fundamental Rights Implications	11 May 2020	<p>Comparison of different measures adopted by EU member states, including:</p> <ul style="list-style-type: none"> • Enforcement and penalties for those not complying with emergency measures- financial sanctions and custodial sentences • Women and children at risk of domestic violence- police powers to deal with this • Discrimination and racist/ xenophobic incidents • Impact on people in detention
Special Procedures Mandate Holders	Statement	17 April 2020	<ul style="list-style-type: none"> • Reminder of Non-derogation of Article 3 • Calls on law- enforcement agencies to use force only when strictly necessary and lethal force only to be used to protect against imminent risk to life. • Breaking curfew or restrictions of freedom of movement should not result in use of excessive force • police interactions with public may represent additional source of risk infection due to high numbers of COVID-19 reported amongst police officers.
Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions	Guidance on the use of force by law-enforcement personnel in time of COVID-19 emergency	2 April 2020	<ul style="list-style-type: none"> • States of emergency are exceptional; their duration should be strictly limited • The right to life is non-derogable • Law-enforcement measures should be guided by the principles of legality, necessity, proportion, precaution and non-discrimination. • Vulnerable groups – such as the poor, migrant workers, the homeless – are already affected disproportionately by the virus. They should not be rendered victimized further because of state of emergency measures. Police must take appropriate and heightened precautionary measures, and conduct context-based assessment of whether the use of force is necessary and proportionate

			<ul style="list-style-type: none"> • Discussion, instruction, consultation and community engagement – these should be the operating principles for the police
Special Rapporteur on the right to freedoms of peaceful assembly and association	Statement	14 April 2020	<ul style="list-style-type: none"> • States response to COVID-19 should not halt freedom of assembly and association • Ensuring public health emergency is not used as pretext for rights infringements • No justification for excessive use of force to be used for dispersing assemblies or for disproportionate penalties to be imposed.
Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	Disease pandemics and the freedom of opinion and expression	23 April 2020	<ul style="list-style-type: none"> • In the report the Special Rapporteur registers alarm that some efforts to combat the coronavirus disease (COVID-19) pandemic may be failing to meet the standards of legality, necessity and proportionality. The SR highlights five areas of concern, showing that access to information, independent media and other free expression rights are critical to meeting the challenges of pandemic.
Special Rapporteur on the independence of judges and lawyers	Seven key guidelines to ensure judges, justice workers, prosecutors and lawyers maintain functioning judicial systems.	22 April	<ul style="list-style-type: none"> • Matters oriented to protect rights, when serious crimes are committed (including corruption connected to this crisis) and cases of domestic violence should receive prior attention and space • Innovation around reporting of abuses

BRIEFING

Children and Young People's Commissioner Scotland

The impact of emergency police powers on the human rights of children and young people in Scotland during the Covid-19 pandemic

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights. The Commissioner is fully independent of the Scottish Government.

Introduction

This briefing has been prepared by the office of the Children and Young People's Commissioner Scotland, to support the scrutiny and monitoring of the Independent Advisory Group (IAG) and is informed by our work and engagement with stakeholders, partners, civil society, families, and importantly, children and young people since the outset of the emergency period.

It is provided to support IAG members to *'pay particular attention to any use of powers involving children, young people or persons within disadvantaged communities ... to ensure that they are fully reflective of Police Scotland's duties.'*¹

In particular, the IAG must ensure that Police Scotland's use of emergency powers is compliant with human rights principles, Police Scotland's values and the overall aim of safeguarding public health.

We have taken account of the submissions and information provided by the other members of the IAG, to date, and do not propose to duplicate the comprehensive human rights analysis of the Scottish Human Rights Commission. Because children and young people have the same human rights entitlements as adults, we will focus on circumstances where additional protections exist to safeguard children and young people who are at risk of being disproportionately affected by the emergency measures.

With particular reference to the principles of the United Nations Convention on the Rights of the Child (UNCRC) we outline the current Scottish legal and policy youth justice frameworks in place to respond to children and young people, in conflict with the law, reflecting on Police Scotland's 'policing by consent' approach and consider whether further data or information is required to assist scrutiny by the IAG.

We hope that our briefing will assist the IAG in its conclusions and recommendations to Police Scotland in planning its human rights-based approach to policing, particularly for children and families, and to Scottish Government, as Scotland moves out of lockdown, in line with the [Scottish Government's Route Map](#).⁵

Background

This briefing considers the first four pieces of relevant emergency legislation:

- Coronavirus Act 2020 ("The UK Act");
- Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations ("Scottish Regulations");
- Coronavirus (Scotland) Act 2020 ("CVS Act 1");
- Coronavirus (Scotland)(No2) Act 2020 ("CVS Act 2").

The UK Act contains a range of new, temporary powers, intended to protect the public in this global health emergency. These include powers to remove and detain "*potentially infectious persons*" for screening and assessment. The Scottish Regulations impose restrictions and requirements upon the general population, and are the means, and associated police powers, by which current social distancing measures may be legally enforced in Scotland.

Whilst both Scottish Acts⁶ contain a range of miscellaneous provisions and measures, with the intention of protecting public health, it is the CVS Act 1 which contains most of the new justice provisions affecting the human rights of children and young people in conflict with the law.

Section 1: International Human Rights and Policing

Assessment of the proportionality of these emergency measures is key to striking the appropriate balance between children and young people's human rights, and the legislation's legitimate aims. This is best achieved through application of international human rights' standards, treaties and guidance. These are outlined in SHRC Annex 2¹ and provide the overarching framework of human rights in the pandemic.

¹ Namely ECHR; ICCPR; CEDAW; UN CAT; CERD; UN CRPD and UNCRC.

Further international guidance and guidelines² reflect the principles of these standards: that measures taken to protect people in a health emergency, by restricting individual's rights and freedoms, must be **lawful, necessary, proportionate, time-limited**, and take into consideration the disproportionate impact on marginalised or vulnerable groups of people, to ensure they are **non-discriminatory**.

On 16 March 2020, in a joint statement, international human rights leaders reminded states of these fundamental principles and urged them “...to remain steadfast in maintaining a human rights-based approach to regulating this pandemic, in order to facilitate the emergence of healthy societies with rule of law and human rights protections.”³

When considering ECHR rights and a human rights-based approach to policing, the guidance from the Council of Europe: The European Convention on Human Rights and Policing 2013: A handbook for police officers and other law enforcement officials stresses that standards in policing children and young people ‘should be seen as being complementary to those set out in a panoply of other international instruments’, including:

- The UNCRC;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the *Beijing Rules*);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (the *Riyadh Guidelines*).

Children's ECHR rights are enhanced by these additional safeguards from international law and policy. So, for example, in the context of the pandemic, children's ECHR rights to life (ECHR Art. 2) and non-discrimination (ECHR Art.14) are mirrored in UNCRC Articles 6 and 2, and are particularly important for those groups of children most at risk of contracting coronavirus and/or disproportionately affected by social inequalities and vulnerabilities, including: children who are living in poverty; who are at risk of abuse or exploitation; children from ethnic minority or marginalised groups; migrant, asylum seeking and refugee children; children with disabilities, and care experienced children.

² For example, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights; the Human Rights Committee, General Comment 29, States of Emergency (article 4); the CCPR General Comment No. 27: Article 12 (Freedom of Movement); and most recently, Council of Europe Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: a toolkit for member states' 7 April 2020

³ UNOHRC: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>

For those children and young people in conflict with the law, their rights to liberty and security of person (Art 5); protection from inhuman, degrading treatment or punishment (Art 3); privacy (Art. 8); fair trial and due process (Art. 6) must all be respected in line with the international standards of child-friendly juvenile justice⁴.

What does this mean for policing in the current crisis, and what additional precautions have been taken by Police Scotland to ensure children are not being exposed to additional risks during this time?

Where children are being deprived of their liberty in police custody, for example, police officers must ensure in accordance with the ECHR Article 5 principles that they are only ever deprived of their liberty as a measure of last resort, and for the shortest possible period of time.⁵ In addition to fair process rights, such as to a presumption of innocence, legal advice or fair trial, consideration must also be given to the age, maturity, understanding and needs of the child, throughout the process.

If, during the emergency period, police officers are questioning a child, whether as a suspect, accused person, victim or witness they must take account of, not only the human rights principles of **necessity, proportionality and prevention**, but also the General Principles of the UNCRC, and only act in the ‘best interests’ of the child, taking account of their views throughout.⁶ This right to ‘effective participation’ is one of the core concepts underlying the guidance and guidelines, from both the Council of Europe⁷ and the UN Committee on the Rights of the Child⁸, and finds its legal basis in a child’s UNCRC rights to be heard⁹ and to a fair trial and treatment¹⁰ and the equivalent international treaties, including Articles 3 and 6 of ECHR. The European Court of Human Rights has made explicit reference to the rights of children in conflict with the law and Articles 12 and 40 of the UNCRC, holding that:

‘It is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that the steps are taken to promote his ability to understand and participate in the proceedings.’¹¹

⁴ In accordance with UNCRC, Article 40; UN Committee on the Rights of the Child: General Comment No.24 (2019) on children’s rights in the child justice system; and Council of Europe Guidelines on Child Friendly Justice 2010 (See below).

⁵ Echoed in UNCRC Article 37 b. and Rules 13 and 19 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’).

⁶ UNCRC Articles 3 and 12.

⁷ Council of Europe Guidelines on Child Friendly Justice 2010.

⁸⁸ UN Committee on the Rights of the Child (2019) ‘General Comment No.24 (2019) on children’s rights in the child justice system’ and UN Committee on the Rights of the Child (2009) ‘General Comment No.12’.

⁹ UNCRC Article12 (see also ‘Beijing Rules’ 14).

¹⁰ UNCRC Article 40.

¹¹ ECtHR (GC), 16 December 1999, appl.no, 24724/94 (T v UK para 84).

The UN Committee on the Rights of the Child has recently revised its General Comment on children's rights in the child justice system,¹² reminding states of the international standards and principles of 'child-friendly justice' and, in particular, that in accordance with UNCRC Article 40:

“States parties should enact legislation and ensure practices that safeguard children's rights from the moment of contact with the system, including at the stopping, warning or arrest stage, while in custody of police or other law enforcement agencies, during transfers to and from police stations, places of detention and courts, and during questioning, searches and the taking of evidentiary samples.”

Section 2: Domestic law and policy - 'Child-friendly justice' and policing in Scotland

For those members of the IAG who may not be acquainted with the Scottish Youth Justice System, it may be helpful for us to outline a short summary of the key elements and reference significant areas of law, policy and practice which impact on Police Scotland's approach to responding to children and young people during the pandemic.

For over 50 years, Scotland has underpinned its approach to children who are either in conflict with the law, or in need of care a protection, with a welfare-based philosophy that prioritises the best interests and needs of the child, over a traditional, punitive response to criminal behaviour.²³ This 'Kilbrandon' philosophy established the quasi-judicial, Children's Hearings System which has evolved to take account of changing social norms and international human rights obligations.

For the purposes of this briefing, it should be noted that children and young people have the same human rights in the Children's Hearings System as any individual (both adults and children) has in the adult justice system, under international human rights law. In addition, irrespective of which system a child under 18 is involved in, the child has human rights' protections under the international standards (outlined above).

It is beyond the scope of this briefing to provide commentary on the impact of these dual-systems of justice for children in Scotland, and whether they meet Scotland's obligations as a human rights' guarantor for some of the most marginalised and vulnerable children who are in conflict with the law.¹³

¹² UN CRC 'General comment No.24 (2019) on children's rights in the child justice system'.

¹³ For further recent analysis see Claire Lightowler's CYCJ Report, 'Rights Respecting? Scotland's Approach to Children in Conflict with the Law'.

The Children and Young People (Scotland) Act 2014 first referenced the UNCRC in Scots law, providing that Scottish Government and public authorities (including Police Scotland) have statutory duties as Corporate Parents, and are required to report on what steps they have taken to, ‘*secure better or further effect within their areas of responsibility of the UNCRC requirements*’.

In Scotland, these duties are embodied in the Scottish Youth Justice Strategy 2015-2020; GIRFEC and Whole Systems Approach, incorporating the Early and Effective Intervention and prevention approaches aligned with a rights-respecting framework for public services meeting the wellbeing needs of children and young people. This was mirrored in the Children’s Hearings (Scotland) Act 2011, the Criminal Justice (Scotland) Act 2016, Police Scotland’s Children and Young People: Our Approach 2016-2020 Policing Plan and the Standard Operating Procedures: Offending by Children (revised 2019).

The Youth Justice Strategy and WSA require police officers to engage in community-based collaborative responses to children who offend, and to ensure children’s wellbeing needs and rights are being met and avoid criminalisation of children. During the pandemic, this means police officers must consider alternative, diversionary justice responses to formal disposals for every child under 18, who behaves in a way that may be in breach of emergency provisions and guidance. Officers are expected to adopt the *Engage, Explain, Encourage* as the primary response, with *Enforcement* as a last resort, taking place in line with the *Youth Justice Strategy* principles. This reflects the fact that the emergency powers are provided to the Police for the purpose of protecting public health, rather than keeping public order.

Before considering the specific issues of what implementation of these duties and ‘child-friendly justice’ means in Scotland during the pandemic, we must alert the IAG to our concerns about the potentially discriminatory provisions of the emergency legislation for Scottish children and young people.

The UK Act, the CVS Act 1, and the Scottish Regulations, all contain provisions which define ‘a child’ as a person under the age of 16, in Scotland.¹⁴ This is *not* consistent with the English, Welsh and Northern Irish definitions of a ‘child’ which define a child as a person under the age of 18, in accordance with Article 1 of the UNCRC. This reflects the varying definitions of a child which exist in Scots law and concerns have been raised by international human rights experts, including the UN Committee on the Rights of the Child, stressing the obligation on the State to recognise the inherent vulnerabilities of children aged 16 or 17 and extend protections to all children under the age of 18.¹⁵

¹⁴ UK Act, Sch. 21(3), para. 40(7).

¹⁵ Concluding Observations on the 5th Periodical Report of the UK and NI (12 July 2016: CRC/C/GBR/CO/5).

The UK has been specifically criticised regarding the treatment of children in ‘adult’ systems and contemporary research and evidence suggests that much greater consideration of childhood and adolescent maturation and developmental factors is necessary to ensure rights compliance in the criminal justice system.¹⁶ Of particular significance is the failure of the state to increase the age of criminal responsibility. In Scotland this age remains at 8 years of age and legislation to increase the age is not in force.¹⁷ For the avoidance of doubt, it is clear in Scots law that the age of ‘majority’ remains consistent with the rest of the UK, and the UNCRC, as 18¹⁶.

We thank the IAG and Police Scotland for their support in securing an amendment to prevent 16/17 year olds from being issued with Fixed Penalty Notices, and for their assurances that, for the purposes of the work of the IAG, and in line with Police Scotland’s commitments in policy, law and practice, children are defined as everyone under the age of 18.

Impact on children and young people

Since the outset of the crisis, we have undertaken a process of intelligence gathering through engagement with partner organisations, civil society, parents, carers and children and young people. This has been with a view to identifying circumstances of concern about the impact of the emergency provisions for children and young people and supporting a prioritised approach to our work. This has allowed us to identify a number of areas and concerns which will be relevant for Police Scotland and the IAG. Mindful of the UN Committee on the Rights of the Child’s warning on 8th April 2020, of the, “**grave physical, emotional and psychological effect of the COVID-19 pandemic on children**”, urging all states to ensure they put adequate human rights protections in place for all children during the pandemic, we have referred to the Committee’s list of the most important 11 issues affecting children as a result of the pandemic.¹⁸

Adopting the Committee’s 11 issues as a framework for considering the use of police powers allows a recognition that officers do not exercise their powers in a vacuum. The extent and nature of their contact with children during the pandemic will be influenced by a wide range of social, economic and environmental factors, and the decisions they make will have an impact on children’s exposure to additional risk factors in other parts of the justice system. This is explicitly recognised in the Whole Systems Approach and the research that underpins it, but the pandemic both

¹⁶ The Scottish Sentencing Council Guidelines Consultation is underway (closing in August 2020) and includes research, ‘*The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts Literature Review*’ Feb 2020.

¹⁷ The Age of Criminal Responsibility (Scotland) Act 2019 raises the minimum age to 12, but this has not yet been brought into force. The age of 12 falls below the internationally accepted norm as an absolute minimum of 14 years of age.

¹⁸ See Annex 1 for List of 11 issues from UN Committee on the Rights of the Child.

exacerbates existing factors and creates new ones (either directly or as a result of the state response) that officers will need to recognise.

The Committee recognises the importance of limiting restrictions placed on children's rights as a result of the pandemic. We have noted that the two Children's Rights (and Wellbeing) Impact Assessments undertaken by Scottish Government on the two Scottish Acts²⁰ do not adequately address some of the negative or positive impacts on particular groups of children, and fail to consider the steps required to mitigate against adverse impacts. For example, no consideration was given to Article 1 of the UNCRC and the risks of disproportionate criminalisation of children (as noted above).

Similarly, in CVS Act 1, there were significant changes to the administration of justice, in both the adult and children's hearings systems, yet no consideration was given to the impact on children of ECHR rights, particularly regarding Articles 5, 6 and 8 rights to liberty, fair hearings and private and family life²¹ for children subject to Child Protection Orders, Secure Accommodation authorisations or being deprived of their liberty in detention settings.

Importantly, the Scottish Government has been reporting to the Covid-19 Children and Families Directorate Leadership Group on measures in place to respond to the UN Committee's list of issues. However, we have been concerned that most policies and guidance documents produced by Scottish Government and public bodies during the emergency period, have failed to assess the likely impacts on children's human rights, mitigate against adverse impacts, or involve children and young people's participation in their development.

CYPCS has therefore commissioned the Observatory of Children's Human Rights Scotland to undertake an expert analysis through a Children's Rights (& Wellbeing) Impact Assessment, across all areas of children's lives, to consider the most concerning human rights issues for children and young people during this time. We look forward to sharing this work with the IAG and Police Scotland, but in the meantime would encourage the use of a CRIA model to inform decision making, supported by data and consultation with children and young people. We have provided an outline of the recommendations from the CYPCS Young Advisers Group (YAG) following very positive engagement with Police Scotland.¹⁹

We would also refer the IAG to the first Report of findings from CYCJ (which contains views and reflections from young people and people working with them on their experiences of policing during the pandemic).

¹⁹ See Annex 2.

Taken together, these reports will assist the IAG and Police Scotland in adopting a critical approach not only to the use of emergency powers, but also to their necessity. This will provide an evidential base for decisions on when to seek the repeal of powers when they are no longer necessary (as with Fixed Penalty Notices for 16/17 year olds) or disproportionate in their effect.

Additional Considerations

The Committee has also recognised that children's rights to play and association have been significantly restricted due to lack of access to outdoor space and being unable to see friends. As lockdown eases, their right to be in public spaces (e.g supermarkets or parks) is also more likely to be challenged by adults. It is important for officers to be aware of this, and to respond sensitively to any apparent breaches. There may be a number of legitimate reasons why a child is outside of the home. Many children will require more exercise, and opportunities to play, than adults, which are important for their mental health and wellbeing. This means that the starting point for police officers should not be to assume that the child is in breach of the regulations. The first step should be to seek to understand why the child is outside as a key part of the "Engage" step.

The loosening of restrictions for children also involves the prospect of returning to school. One of the impacts of the pandemic has been to highlight that schools are not just places where children learn; they are places where they socialise, eat and play. Particular challenges have been experienced by children with Additional Support Needs, for whom a lot of support which is normally provided by the school has not been available. For some children they are also places of safety where vulnerabilities and needs can be identified and support offered. We note that during the lockdown the measures put in place to identify and support vulnerable children through hubs have not been well taken up and the impacts of that missing support may well take some time to emerge.

Poverty was the biggest human rights issue facing children in Scotland before the COVID-19 pandemic and this crisis is having a disproportionate effect on those already most at risk. It creates strain on relationships, on mental health and on physical health. Children living in poverty are less likely to have space to themselves or access to the outdoors.

Family conflict may result in them being outside more. They may be more likely to come into contact with the police and more likely to display trauma-related responses to that contact. We note that there has been no uniform approach to the delivery of free school meal replacements and as a result some families have not been able to access the food their children are entitled to. Children experiencing hunger may act in way that appears challenging or may resort to stealing food.

As our CYPSC Young Advisors Group (YAG) noted, some children will struggle with understanding the changing rules, especially where they are subject to interpretation.

Mental health has been a significant concern throughout the lockdown and the impacts are likely to remain for some time to come. Certain groups of children are more at risk of negative mental health impacts from lockdown (including children with disabilities and additional support needs, young children, children due to be making school transitions this year, children affected by domestic abuse, those affected by substance abuse, those whose parents have mental ill-health).

Many services which would otherwise support children have been restricted or withdrawn entirely. Those that are available are often responding only to crisis situations. It will be important for officers to remain mindful of the reasons why a child may be exhibiting particular behaviours and to respond appropriately.

There are risks that children who display distressed behaviour, whether as a result of mental health concerns, poverty, disability, or as a response to neglect or abuse, end up being criminalised in the form of challenging behaviour.

Officers should be mindful of needs that may not always be immediately apparent. Some groups of children experienced disproportionate levels of police contact prior to the pandemic, including care-experienced children and children from BAME backgrounds. For example, children living in residential care reported their homes often calling for police assistance in circumstances where families would only do so as a last resort.

The Committee urges the release of children from situations of detention, or places where they may be deprived of their liberty. This is of relevance to Police Scotland when children are alleged to have committed serious crimes or offences, or have to attend an adult court hearing where they may be detained in police custody. For some time, we have expressed concerns that children should not be detained in police custody and called for greater scrutiny and monitoring of conditions of detention to prevent breaches of children's human rights. For example, calls have been made for the practice of strip searching in police custody to be abolished. In this time of a life-threatening health pandemic the violation of children's rights of privacy and bodily integrity may also put the police officers and children at serious risk.

Unfortunately, there is insufficient data to assess whether children's rights are being upheld when detained, and given the significant concerns for children's health and protection during the pandemic and the recommendations of the UN Committee on the Rights of the Child and the CPT, we would call on Police Scotland to **ensure that data is provided to the IAG confirming the number of children under 18 and young people under 21 who were detained, for any reason during the emergency period.**

It would be helpful to know how any decisions to detain took account of the current human rights principles and guidance. This is an issue we are raising with the UK Joint Committee on Human Rights, and the Scottish Parliamentary Justice, Covid-19 and Equality and Human Rights Committees.

Looking to the future

Reflecting on the year prior to the start of the Covid-19 pandemic, it is worth noting that there were a number of important events and publications which were relevant to children's human rights in the justice system in Scotland. These included:

- Scottish Government's commitment to incorporating the UNCRC into Scots law;²⁰
- Report on an Expert Review of the Provision of Mental Health Services, For Young People Entering and in Custody at HMP YOI Polmont²¹;
- Report of the Independent Expert leading the United Nations Global Study on Children Deprived of Liberty;²²
- Claire Lightowler's CYCJ Report, Rights Respecting? Scotland's Approach to Children in Conflict with the Law;²³
- Reports of the Scottish Independent Care Review 'The Promise' 2020;²⁴
- UN Committee on the Rights of the Child (2019) 'General Comment No.24 (2019) on children's rights in the child justice system.'²⁵

As Scotland navigates the route out of lockdown, it will be important to be guided by these expert findings and recommendations and informed by a children's rights-based approach in preparation for incorporation of the UNCRC.

We hope this briefing helps the IAG identify some of the most important considerations required to respect children and young people's human rights in the monitoring and scrutiny of the use of police powers during the Covid-19 pandemic and at this stage would make the following **recommendations**:

- **Police Scotland should collect and provide to the IAG disaggregated data on the use of emergency powers in relation to children, broken down by protected characteristic and care experience.**

²⁰ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12376&i=111834>

²¹ https://www.prisonsscotland.gov.uk/sites/default/files/publication_files/Report%20on%20Expert%20Review%20of%20Provision%20of%20Mental%20Health%20Services%20at%20HMP%20YOI%20Polmont%20-%20Final%20Version.pdf

²² <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>

²³ <https://cycj.org.uk/wp-content/uploads/2020/01/Rights-Respecting-Scotlands-approach-to-children-in-conflict-with-the-law.pdf>

²⁴ <https://www.carereview.scot/destination/independent-care-review-reports/>

²⁵ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGUxFlvhToQfiGxYiV05tUAiIgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4>

This will support an assessment of proportionality in terms of use of powers and should include information where parents and carers have been issued Fixed Penalty Notices (FPN) as a result of their child's behaviour.

- **Police Scotland should engage in further consultation with affected groups and those most likely to come into contact/conflict with the law.**

We note that consultation with CYPCS Young Advisers Group (YAG)²⁶ resulted in guidance to Police officers that was informed directly by the views of young people and would encourage this approach.

- **Police Scotland should keep under regular and critical review the necessity of emergency powers, and seek their repeal as soon as they become unnecessary or disproportionate in effect.**

Police Scotland's support for the repeal of the provisions on FPNs for 16/17 year olds was an example of a human rights-based approach to necessity of powers and this should continue.

- **Police Scotland should confirm how many children under the age of 18, and young people under the age of 21 received Fixed Penalty Notices at each phase of the Scottish Government's Route Map.**
- **Police Scotland should undertake a review of FPNs issued to 16/17 year olds prior to the amendment of the Scottish Regulations to ensure that the penalties will be removed from the children's records and the interim Vulnerable Persons Database**
- **Police Scotland should confirm how many children and young people were referred to SCRA, Crown Office and Procurator Fiscal Service or subject to diversionary measures under the Youth Justice Strategy as a result of their conduct or behaviour during the emergency period.**

Children and Young People's Commissioner Scotland
05 June 2020

²⁶ See **Annex 2** CYPCS YAG Notes of Meeting Police Powers.

ANNEX 1:

The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children

The Committee on the Rights of the Child expresses concern about the situation of children globally, particularly those in situations of vulnerability, due to the effects of the COVID-19 pandemic. Many children are gravely affected physically, emotionally and psychologically, especially in countries that have declared states of emergencies and mandatory lockdowns.

In addition to the [declaration of ten human rights treaty bodies](#), the Committee further urges States to respect the rights of the child in taking measures to tackle the public health threat posed by the COVID-19 pandemic. In particular, the Committee calls on States to:

1. **Consider the health, social, educational, economic and recreational impacts of the pandemic on the rights of the child.** Although initially declared for short terms, it becomes clear that declarations of States of emergencies and/or disaster may be maintained for longer periods, leading to longer periods of restrictions on the enjoyment of human rights. The Committee recognizes that in crisis situations, international human rights law exceptionally permits measures that may restrict the enjoyment of certain human rights in order to protect public health. However, such restrictions must be imposed only when necessary, be proportionate and kept to an absolute minimum. Additionally, while acknowledging that the COVID-19 pandemic may have a significant and adverse impact on the availability of financial resources, these difficulties should not be regarded as an impediment to the implementation of the Convention. Nevertheless, States should ensure that responses to the pandemic, including restrictions and decisions on allocation of resources, reflect the principle of the best interests of the child.
2. **Explore alternative and creative solutions for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities.** Such solutions should include supervised outdoor activities at least once a day which respect physical distance protocols and other hygiene standards, and child-friendly cultural and artistic activities on TV, radio and online.
3. **Ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction.** Online learning is a creative alternative to classroom learning but poses challenges for children who have limited or no access to technology or the Internet or do not have adequate parental support. Alternative solutions should be available for such children to benefit from the guidance and support provided by teachers.
4. **Activate immediate measures to ensure that children are fed nutritious food** during the period of emergency, disaster or lockdown, as many children receive their only nutritious meal through school feeding schemes.
5. **Maintain the provision of basic services for children including healthcare, water, sanitation and birth registration.** Despite the increasing pressure on health systems and the scarcity of resources, children should not be denied access to health care, including to testing and a potential future vaccine, to COVID-19 – related and COVID-19 – unrelated medical treatment, mental health services and treatment for pre-existing conditions.

Children should also have access to clean water and sanitation facilities during the period of emergency, disaster or lockdown. Birth registration services should not be suspended.

6. **Define core child protection services as essential and ensure that they remain functioning and available, including home visits when necessary, and provide professional mental health services for children living in lockdown.** Confinement may expose children to increased physical and psychological violence at home, or force children to stay in homes that are overcrowded and lack the minimum conditions of habitability. Children with disabilities and behavioural problems, as well as their families, may face additional difficulties behind closed doors. States should strengthen phone and online reporting and referral systems as well as sensitization and awareness activities through TV, radio and online channels. Strategies to mitigate the economic and social impact of the COVID-19 pandemic should also include specific measures to protect children, particularly those living in poverty and lacking access to adequate housing.
7. **Protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.** These include children with disabilities; children living in poverty; children in street situations; migrant, asylum-seeking, refugee and internally displaced children; minority and indigenous children; children with underlying health conditions including HIV/AIDS; children deprived of their liberty or confined in police lock-up facilities, prisons, secure care centres, migrant detention centres or camps; and children living in institutions. States should respect the right of every child to **non-discrimination in its measures** to address the COVID-19 pandemic as well as take targeted measures to protect children in vulnerable situations.
8. **Release children in all forms of detention, whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families.** Many States have adopted measures to restrict visits and contact opportunities for children living in institutions or deprived of their liberty, including children confined in police institutions, prisons, secure centres, migration detention centres or camps. While these restrictive measures can be seen as necessary in the short term, over long periods they will have a marked negative effect on children. Children should at all times be allowed to maintain regular contact with their families, and if not in person, through electronic communication or telephone. If the period of emergency, disaster or State-ordered confinement is extended, consideration should be given to reassessing the measures that prohibit such visits. Children in migration situations should not be detained nor separated from their parents if accompanied.
9. **Prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19,** and ensure that any child who was arrested or detained is immediately returned to his or her family.
10. **Disseminate accurate information about COVID-19 and how to prevent infection in languages and formats that are child-friendly and accessible to all children including children with disabilities, migrant children and children with limited access to the Internet.**
11. **Provide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic.** Children should understand what is happening and feel that they are taking part in the decisions that are being made in response to the pandemic.

8 April 2020

ANNEX 2 CYPCS YAG: Notes of Meeting Police Powers

***** Internal Use Only*****

CYPCS Young Advisers Group-Summary of notes from discussion on Police Powers May 2020

Attendees: Nick Hobbs, Nicola Harris (CYPCS), CM, BW, EM, JH, VP (YAG)

How much do you feel you understand the rules? 1(not at all) – 5(completely) show of fingers (not a test!)

- All showed 3-4 fingers

What is clear and what isn't?

- Extent of powers are not clear.
- What does reasonable force mean? When would it be used?
- What are the sanctions for breaching the restrictions?
- What is expected of members of the public?

Key messages for Police Officers

- Don't make presumptions about people and why they might be outside
- Speak to young people as individuals
- Try not to patronise them
- Listen to what they've got to say and try to understand their perspective
- Bear in mind they may believe their excuse is reasonable even if you don't. If that's the case, they're not deliberately breaking the law. They need explanation and help to understand.
- Remember that not everyone has access to reliable and accurate information
- Be open to them asking you questions
- Remember that some children and families are not "typical". Think about disabilities (may not be visible), or people for whom English is not a first language
- Remember that some children won't have any experience of speaking to the police and may find you scary or intimidating. Don't make this worse by trying to scare them with talk of death.
- Be clear about your job. Is it to send everyone home or is it public health, or public protection, or child protection? What's the priority?
- Be mindful of the possibility of domestic abuse or other protection issues
- Use force/enforcement as a last resort

Do you have any suggestions for ways in which police could open a conversation with a young person? What question should they ask?

- Normalise the conversation from the start
- Say hello/hi
- Introduce yourself
- As a neutral question eg how are you?
- Don't assume there's a problem

What principles should police apply when providing information to young people?

- Videos work well on social media but make them "more chill" and less scary
- Best not to come directly from the Police, use other people to deliver the message (young people, key workers etc)
- Don't make it seem that young people are the main problem. Lots of older people are breaching the restrictions too – they need to hear messages too
- Remember that there are lots of different messages out there and some of them are confusing and contradictory. Try to deliver a simple one.
- Maybe a letter to every house, but not specifically aimed at young people for the reasons explained above

‘Spend time with me’: Children and young people’s experiences of COVID-19 and the justice system

Debbie Nolan, CYCJ

June 2020

Contents

Acknowledgements	3
Summary of key findings	4
Introduction	6
Approach	6
Children and young people’s experiences	7
The biggest issues.....	7
Experiences of restrictions.....	8
Practitioner’s perspectives	13
Biggest issues for children and young people	13
What is working to support children and young people?	16
Practice examples	19
Perth and Kinross Council	20
East Ayrshire Council	20
Aberdeen City Council	21
Barnardo’s services in Stirling and Clackmannanshire.....	21
Rossie Young People’s Trust	22
Appendix 1	23

Acknowledgements

With thanks to all the children, young people and practitioners who participated in this project. Particular thanks to Youth Just Us and Ruth Kerracher.

Summary of key findings

This paper details the findings of a short piece of work to gather the views of children and young people who are currently in contact with youth justice services or with previous experience of the youth justice system on COVID-19, and of practitioners working within the youth justice system. In total, 48 responses were received from children and young people, with findings from another organisation who had undertaken their own research with a further 22 children questions incorporated where relevant. Thirty six responses were received from practitioners covering 19 local authority areas, with almost three quarters of respondents social work staff and the remainder from third sector organisations.

Children and young people's experiences

- Children and young people cited **isolation and lack of contact** with others - family, friends and services - as the biggest issue affecting those in contact with the justice system. Other **impacts of COVID-19 restrictions** included boredom, not being able to attend school, managing financially and lack of information and the uncertainty of the current situation.
- **Changes to the operation of the youth justice system** were highlighted as a concern. This included **delays** owing to restrictions to court and Children's Hearings; **progression of plans**; maintaining **contact with services and supports including social work and legal professionals and attending court**; and for those in **custody**.
- **Lockdown** was most commonly described as a **negative experience**, particularly in terms of isolation, the challenge of staying in all the time, getting used to the change and impacts on individual circumstances. Staying **occupied** and **contact** from others helped.
- Views on **physical distancing** were **more mixed** and overall more positive than on lockdown.
- For those who had been in contact with the **police, mixed experiences** were reported, varying between responses being deemed fair and appropriate and more adversarial and negative. A small group of children described negative experiences based on feeling targeted by the police.
- Almost all participants had been able to **stay in touch** with family and friends and many with services and supports, with various means being utilised to do so.
- The impact on children and young people's **mental health** was a key theme.
- Others could help by **supporting contact** with family and friends; **keeping in touch**; having activities and **things to stay busy**; **easing restrictions**; and **supporting particular young people** such as those in custody.

Practitioner's perspectives

- The biggest issues affecting children and young people in contact with the justice system and services were **social isolation**, affecting their health and wellbeing, and **boredom and lack of activity**, affecting routine and substance use. The challenges of **keeping in contact** and increased **difficulties in relationships and conflict within the family home** were also highlighted.
- Changes in **offence types** have been noted in some areas, with particular challenges identified with the **operation of the justice system** across all areas of the Whole System Approach. Some existing challenges such as delays to processes and release from custody have been **exacerbated** by COVID-19.
- Overall children and young people have **complied well with the restrictions** associated with COVID-19 and the approach from Police Scotland is reported to have been **appropriate**. Some issues and **wider criminalisation** concerns have been noted.

- The impact on offence types and compliance with restrictions has **changed** in some areas and for some children as time has progressed.
- A range of factors have worked in supporting children and young people: **keeping in touch** through creative methods; ensuring access to things to keep them **occupied**, **practical resources** and **technology**; working with **partners**; and the **dedication of staff**.

Introduction

COVID-19 has brought unprecedented and challenging circumstances and unimaginable changes to everyone's lives. Although a plethora of work is being undertaken to capture children and young people's views and experiences of COVID-19, as well as those of the workforce supporting these children, CYCJ identified a gap in the insights and information from those involved in the youth justice system. We sought to address this by undertaking a short piece of work to gather the views of children and young who are currently in contact with youth justice services or with previous experience of the youth justice system on COVID-19, and of practitioners working within the youth justice system. The findings from this work along with practice case study examples are outlined in this paper. This evidence has also been used to inform the Alternative Child Rights Impact Assessment about coronavirus, commissioned by the Children and Young People's Commissioner for Scotland.

Approach

The approach adopted to gather views, experiences and insights varied for the different participant groups:

1. Children and young people who are currently in contact with youth justice services or with previous experience of the youth justice system

A three-fold approach was taken through the use of consistent topic guides developed by CYCJ based on issues that have been highlighted to us by practitioners, research evidence and issues raised and questions developed by the young people of Youth Just Us, the steering group behind the Staf and CYCJ [Youth Justice Voices project](#) (see Appendix 1).

Topic guides and information for children and young people were shared with youth justice practitioners to utilise in conversations with the children they are working with. These materials were shared with CYCJ's existing networks and practitioner contacts via email, such as Whole System Approach (WSA) leads, secure care centre Heads of Service, the Scottish Prison Service, and the [Scottish Government Youth Justice Strategy Implementation Groups](#). Flexible use of the guides was encouraged based on the areas that children were most interested or concerned about and in a manner that best suited them, with slightly different topic guides developed for children in the community, in secure care and in HMP YOI Polmont. Aonymised responses were then shared with CYCJ via email, with a total of 41 responses received. Age information was not received for five of these responses, but for those whom this information was received, all bar one respondent was aged under 18. The gender of six respondents was not identified, but for the remaining respondents, two-thirds were male. Seven respondents had previous experience of the youth justice system, with the remainder currently in contact with youth justice services. In addition, another organisation who had undertaken their own research shared findings from 22 children to slightly different questions, which have been incorporated where relevant.

CYCJ staff gathered the views of young people with previous experience of the youth justice system with whom we have existing and ongoing contact. Responses were received by phone, text or email, with CYCJ staff anonymously documenting them. A total of seven responses were received in this manner, with the young people aged between 20 and 25, four of whom were male and three female. All bar one respondent was currently in the community and along with having previous experience of the youth justice system, almost half of these respondents had some form of current involvement with the justice system.

Information was shared on CYCJ's website and social media asking young people aged over 18 with experience of the youth justice system to get in touch for CYCJ staff to have a conversation guided by the topic guide over the phone or through virtual contact. No responses were received through this means.

In each of these approaches, consistent information about the project, consent, anonymity and how this information would be used was shared with all participants (see Appendix 1). In this paper, the term children is used to refer to those respondents aged under 18 in accordance with the UNCRC, with those aged 18 and over referred to as young people.

2. Practitioners working within the youth justice system.

A small number of questions were posed to participants in two virtual meetings:

- The WSA leads meeting which comprises representatives with responsibilities for youth justice across the 32 local authorities in Scotland.
- The Early and Effective (EEI) Intervention Practitioners Forum, comprising local authority and third sector staff who have responsibilities for leading or delivering EEI processes and interventions across local authorities.

Email versions of these questions were also sent to members of both forums to enable those who were not directly attending to share information. The purpose of the information requests, and their use, including in terms of anonymity and reporting, was explained in all contacts with members of both forums. These questions and information was also shared with members of the National Youth Justice Advisory Group (NYJAG) via email. In some cases, these requests for information were shared within teams, which yielded a number of responses from some organisations/areas. In the same manner, members of all forums were invited to share short case study examples for inclusion in this report. In total 36 responses were received, either in writing or verbally, covering 19 local authority areas (almost 60% of Scottish local authorities), with responses predominantly from social work staff and ten from third sector organisations.

The analysis of these findings is detailed in this report. The findings are presented anonymously and broken down as above. It is acknowledged that this was a small-scale, quickly completed project. The approaches adopted were owing to the short timescales involved but it is recognised this meant the depth and volume of responses that could be received is inherently limited and that participants have largely been sought from CYCJ's existing contacts and networks. In addition, not all respondents answered all questions posed. As such, the findings are best considered as a snapshot of the views and experiences of those who participated as shared in May 2020.

Children and young people's experiences

In capturing the views and experiences of children and young people who are currently in contact with youth justice services or with previous experience of the youth justice system on COVID-19, our focus was on the issues affecting them; experiences of restrictions; maintaining contact with family, friends and supports; and what could be done to help, as differentiated below.

The biggest issues

Children and young people were asked what they thought are the biggest issues affecting young people in contact with the justice system during COVID-19. Overwhelmingly, **isolation and lack of contact** with others-family, friends and services-through visits, face-to-face contact and positive physical contact and affection was cited most frequently. Linked to this, a small number of respondents specifically mentioned

the impact of COVID-19 on children and young people's mental health, including loneliness, the worry about the health of family members, fear of the virus spreading and the impact of people dying:

"I think these circumstances will be creating more anxieties in young people as they won't be able to have regular updates about their families. I think this has also created a lot of stress in young people too because they have taken a lot of their rights away and this will leave young people to feel not in control of a lot of situations" (Young person with previous experience of the justice system).

Only one mention was made of drugs or seeking drugs as the biggest issue.

Other **impacts of COVID-19 restrictions** were mentioned on a few occasions. This included things like children and young people not being able to go out, boredom, needing to *stick to the rules*, not being able to attend school and trying to do school work at home, and managing financially. Linked to this was lack of **information and the uncertainty** of the current situation, with the resulting inability to provide assurance to children and young people. A number of children and young people stated they didn't know what the impact was.

A few children and young people made reference to **changes to the operation of the youth justice system** (aside from police contact which is discussed further below). The impact of **delays** owing to restrictions to court and Children's Hearings and on **progression of plans** (for example, on time out with the secure care centre or custody and ultimately leaving such establishments and being able to go home) was cited. Throughout responses **changes to contact with supports and services**, including social work, third sector organisations, education and legal professionals were mentioned. One young person specifically mentioned the challenges around making contact with their lawyer and in getting to court:

"When I was trying to get in touch with my lawyer it was hard to start with because normally I would just pop into his office. My worker helped me but if I didn't have her I wouldn't have got my bail conditions changed and be able to attend the birth of my child... The court being closed causes problems, I had to borrow money to get to a different town to go to the court there, some people might not have money to get there and then they would get in even more trouble" (Child currently in contact with youth justice services)

Another young person who is progressing from custody described his experience:

"...no contact with friends and family; locked up at 5pm, no information, nothing is getting done, no support, we don't know what's going on, no gym, only £2 been added as credit for phone calls for friends and family, lots of tension, prison politics, no video calls, visits or mobile phones in cells - said this was going to happen weeks ago" (Young person currently in contact with justice services).

Similarly, another respondent specifically mentioned the challenge of not seeing a family member who is in prison.

Experiences of restrictions

a) Lockdown

Respondents were asked how they had found lockdown. Some children and young people were very clear that their experience could be described as one thing, whereas others provided multiple varying descriptions at once, stating "at times this and at others this" or "then and now". The most commonly used

terms described lockdown as a **negative experience** with words like *hard, difficult challenging, terrible, tough, stressful, depressing and frustrating* used:

“Lockdown has been horrible and weird. Not getting out and about feels crazy & when you think something has affected the whole world it feels like a big dream” (Child currently in contact with youth justice services).

“Rubbish, I hate it so much” (Child with previous experience of the youth justice system).

Terms like *alright, ok, and fine* were used by a fewer number of respondents but were still used fairly frequently. On a very small number of occasions, respondents used **positive terms** like *good, decent and better than I thought it would be*.

When asked about what had been difficult, **isolation** and particularly not being able to see family and friends was the most frequently cited issue:

“Not seeing my family or being able to visit my granda when he was in hospital” (Young person with previous experience of the youth justice system).

Conversely, in a small number of occasions the challenges of being “stuck” with family and unable to leave were cited. Many children and young people spoke about the challenge of **staying in all the time**, having nothing to do and not being allowed to do what they wanted. Some raised the subsequent fear of going out in case this led them into contact with other people who were not adhering to restrictions or the police, even when this was for legitimate and permitted reasons such as shopping or daily exercise. A small number of participants specifically mentioned the impact of the current situation on their **mental health**:

“Staying in the house, I get upset all the time and have been crying a lot” (Child with previous experience of the youth justice system).

“I was living myself so I was isolated and it was effecting my mental health - I couldn't go near or speak to anyone and that was so hard coz I'm a social butterfly” (Young person with previous experience of the youth justice system).

Getting used to the change and particularly in respect of the implications for **education, college and university courses, employment and home schooling** for those who are parents was mentioned by a few respondents. Some individual respondents also made reference to the challenges COVID-19 had brought for their **circumstances** such as exacerbating addition issues, the loss of accommodation due to family breakdown, moving between separated parent's homes, residing in a new/different area and managing financially. A small number of respondents stated they had found nothing about lockdown difficult.

When asked about what has **helped**, young people frequently cited things that kept them **occupied and stay busy**, the most commonly cited being exercise or physical activity and being allowed to go out daily, followed by games consoles/computers, having or walking their dog, films/television, music, work/education, cooking/baking, art and reading:

“My dog has gave me purpose to get up, dressed and go for a walk” (Young person with previous experience of the youth justice system)

“Participation groups, keeping busy, having a routine, support, self-care packages” (Young person currently in contact with youth justice services)

“Cooking at home. It’s made me realise that maybe I could be a chef if I don’t get in the army”
(Child currently in contact with youth justice services)

Support and contact from others was also reported to be important. Time with family was cited most frequently, but being able to speak to friends, and the challenges when young people did not have the resources to do so (a phone or credit and residing with others) was also mentioned. Having support from staff who they worked with and services was also frequently cited:

“I re-engaged with addiction services from where I used to live and also my probation officer who I’m not obligated to see anymore to let him know that I was a bit down and needed help” (Young person currently in contact with youth justice services).

Two mentions were also made of having information about COVID-19.

A small number of responses also cited the **benefits** of lockdown as having less to do and more time to relax, being able to sleep longer, having greater energy, more time at home, bonding with family/carers, and the chance to enjoy hobbies, learn new skills and focus on future. This was often with the caveat that they would still prefer to be doing the things they did previously:

“It’s made me realise how much I appreciate my mates since we haven’t been with each other in ages you like there company” (Child currently in contact with youth justice services)

“Being in has made me stop smoking so I’ve not been thinking I need to go outside for a fag. That’s reduced my contact with people as it’s a communal smoking area” (Child currently in contact with youth justice services).

b) Physical distancing

Children and young people had **mixed views** on physical distancing. The main terms that were used to describe physical distancing were that this was *alright*, *fine* and for some young people *easy*. Respondents often added that this was because they had not been going out, seen others out with their family/household, found other ways to keep in touch, and there was no choice in this matter:

“Everyone is the same so we just keep apart when going past people” (Child currently in contact with youth justice services).

A very small number of participants made reference to them or other young people still meeting up and not adhering to physical distancing rules.

A smaller but still large number of respondents described physical distancing in negative terms. These included *hard*, *difficult*, *annoying* and *awkward*:

“I have found social distancing really hard because I feel awkward because naturally I’m just daft and in my own world and now I need to be aware of everything around this makes me drained and overwhelmed after being out especially to the shops” (Young person with previous experience of the youth justice system).

Linked to this, a small number of young people made reference to the behaviour of others that could make physical distancing more challenging, for example when out for walks or in the supermarket. It was

reported this could put people off going out or make this more difficult, particularly where the young person lacked confidence to ask others to move out of the way or challenge non-compliance with restrictions.

c) Police contact

Children and young people were specifically asked about their experiences with the police when they were out, with **mixed experiences** reported. The overwhelming majority reported having no contact with the police and one respondent contact for a non COVID-19 related matter. A few participants reported having seen a police presence when out but had no direct dealings with the police. A small number advised that they made particular efforts to avoid the police:

“I have seen the police around but have not directly spoken to them but the thought of them approaching me asking why I’m out gives me so much anxiety and makes me not want to go anywhere” (Young person with previous experience of the youth justice system).

A small number of children and young people reported that they had been in contact with the police but that this response had been fair and appropriate. A similar number reported more adversarial and negative contacts including being arrested, charged or that they knew people who had been fined. A few children and young people reported feeling unfairly targeted by police officers:

“Nasty they approach me most times I am out” (Child currently in contact with youth justice services)

“I’ve made an effort to stay in and keep my head down and the police have still be at my door blaming me for things” (Child currently in contact with youth justice services)

Keeping in touch with family, friends and services

Specific questions on keeping in touch with people were asked, albeit contact and more specifically restrictions on contact with others was cited throughout responses, arguably evidencing the significance of this issue for children and young people. Almost all respondents reported having been **able to keep in touch with family and friends** either through face-to-face contact (including using physical distancing/PPE as appropriate), phone calls and texts, video calls, virtual platforms such as Skype and Zoom, Snapchat, social media, games consoles, and WhatsApp. Such contact, whilst welcomed, for some children and young people brought additional challenges and the sense that this was not the same as previously:

“I have been keeping in touch with family & friends on the phone through calls, texts, snapchat & Facebook. I’m really glad I can do this but it also makes me feel sad because I can’t see them” (Child with previous experience of the justice system).

“I use my phone to phone/text/video so that’s allowed me to keep in touch with people. I’ve had a socially distanced visit each week with my kids, it’s been hard but at least I see them on video and once per week” (Child currently in contact with youth justice services).

“Friends and family video calls and texts but it’s not the same” (Young person with previous experience of the youth justice system).

Many children and young people made reference to **maintaining contact with services and supports** such as social work, third sector organisations, lawyers and education, through a similar combination of

methods to those detailed above. Face-to-face contact and home visits with appropriate safeguards were also mentioned and clearly appreciated.

When asked what **more could be done to support keeping in touch**, the most common response was nothing, often owing to children and young people reporting that they had what they needed to do so, but expressed they were acutely aware not everyone did. A few young people specifically mentioned that they could benefit from having devices or better devices, like mobile phones, laptops and computers, and internet access:

“Not me but there should be more support for other people that can’t. So some charities are doing grants and things to help buy a phone or communication device. That’s all well and good but if you can’t afford internet there should be more support around that. Especially for young people”
(Young person with previous experience of the youth justice system).

“Enough data or Wi-Fi. Everyone having same technology” (Child currently in contact with youth justice services).

Many children and young people specifically mentioned that it would help to continue to utilise methods of keeping in touch as detailed above. A small number specifically stated they did not know what else could be done and a similar number for COVID-19 to go away and for restrictions to be eased.

What can those around you do to help?

When asked what could help, most respondents said **nothing** with the rationale behind this varying between they were ok, often highlighting their fortunate position in the current situation, and that they had the help and support they needed. A number of children and young people mentioned supporting **contact** with family and friends, including through the provision of devices and internet data, and professionals **keeping in touch**:

“Just keep in contact with me, I’ve been getting a lot of phone support and it’s good to know people are still there and able to help me” (Child currently in contact with youth justice services).

In doing so, the provision of positive support, motivation and encouragement appeared as important for some respondents:

“Spend time with me...Encourage me to do things even though I mostly say no, but I really like it when a few staff come in & sit with me, make me laugh & even discuss my past” (Child with previous experience of the youth justice system).

Individual children and young people mentioned more specific things staff could do to improve their circumstances such as supporting contact with siblings and gaining suitable accommodation.

Having **activities and things to stay busy** was also identified as an important help. Two young people made specific reference to improvements for people currently in **custody** including the use of video link to enable family contact; more things to keep them occupied and time out with their cell; and increase privileges in recognition of the current situation, such as more money for food or new items on their canteen sheets.

Two respondents made specific **recommendations for the Scottish Government**:

“I think the government should be putting a fund in so there is more things to offer help to people at this time” (Young person with previous experience of the youth justice system).

“It would be helpful if Nicola Sturgeon could reassure care experienced young people that police are still corporate parents and they have a responsibility to make sure we are safe and can confide in the police. I worry that a lot of care placements will be breaking down and young people will feel helpless in these situation” (Young person with previous of the youth justice system).

More generally, a number of children and young people stated that **easing restrictions** would help them, with many stating they wanted to get back to normality and have things to look forward to:

“Just want things to go back to normal and all my workers and family can visit me at the house without me being embarrassed to phone if I need anything” (Young person with previous experience of the youth justice system).

Practitioner’s perspectives

Biggest issues for children and young people

As with children and young people, **social isolation** from friends, family, and regular supports was one of the most commonly cited issues by practitioners when asked what they thought are the biggest issues affecting young people in contact with the justice system and services. Similarly practitioners also highlighted the impact of this on children and young people’s **health and wellbeing**, stating that for some children and young people the impact on their mental health has been significant. Linked to this, **boredom and lack of activity** was cited as another major issue for children and young people, with many respondents also citing the struggle with the **lack of routine and structure**. In some areas, increased **alcohol/stance use** was cited, with local variations in the type and availability of usage noted. This is illustrated:

“The most common thing young people I have worked with have complained about is being bored at home. Limited things to do and limited access to activities that they would normally do. Some miss having face to face contact with relatives and friends, particularly ones they are close to” (Respondent from a third sector organisation).

The next most common issue, which is probably unsurprising given the participant group, was the changes to, and **challenges of, keeping in contact** with children and young people, given the limits to face-to-face contact and fewer people seeing these children. As such, many participants reported it was difficult to get a real sense of what is going on for children, young people and families and how they are managing. This was reported to be particularly difficult where there are not established existing relationships with children, young people or their family; children and young people did not have access to their own technology or a private space to talk to staff; or where maintaining trust was more challenging. Linked to this, challenges of undertaking focused work, group work, maintaining the usual robustness of support, and signposting/supporting access to other services were cited. Collectively it was reported that this could make it difficult for practitioners to be able to intervene before **crisis point** is reached.

Increased **difficulties in relationships and conflict within the family home** (with and between children, siblings and parents), relationships breaking down and at times owing to the lack of natural respite and supports, young people being accommodated in local authority care or presenting as homeless were frequently mentioned. It has been noted that some of this conflict is owing to the challenges and stresses associated with COVID-19 (particularly the inability to go out and natural respites such as school and work), children's compliance with restrictions along with parents/carers enforcement of restrictions, and coping mechanisms of parents as well as children and young people:

“Being at home with family. Often relationships are strained at home and lockdown is forcing people together for longer periods of time. Types of offences we are seeing during lockdown are online or fights with family, within the family home” (Respondent from a local authority)

“Higher level of concerns for mental health of young people, anxiety impacted often by deterioration in parent's mental health, parental substance misuse and spikes in domestic violence” (Respondent from a local authority).

The risks of these experiences to children and young people were cited, such as abuse, neglect, domestic abuse, coercive control, criminal exploitation or sexual exploitation. In some areas this has resulted in increased demand for placements and accommodation, which in turn was reported to bring challenges in terms of availability, access and willingness for providers to take young people who might present difficulties in terms of compliance with restrictions.

Ensuring children and young people have activities to do to keep them **occupied and practical** things like food, phones, laptops/tablets, phone credit, and internet data was also highlighted. The basic practical difficulties for some families of going shopping, only having access to public transport, lack of childcare, and finances were cited. **Access to technology** has been really important and where children and young people are not able to access this it can be challenging for multiple reasons. In particular, some participants reported that most **education** resources are online and where these cannot be accessed options are more limited. Alongside access issues, practitioners highlighted the difficulties of keeping children motivated to engage with education, and concerns about missing out on schoolwork.

While some areas specifically stated that offences being committed by children and young people had reduced, in others **changes to offence types** (particularly increases in shoplifting, antisocial behaviour and COVID-19 related offences such as coughing and spitting) were reported. Latterly, some areas have highlighted an increase in offences and particularly in more serious offences such as driving offences, serious assaults and possession of drugs and weapons.

Changes in the **operation of the justice system** were also cited by some respondents. Issues such as travel to and from **courts** where physical appearances were necessary and **delays** and postponement court cases were highlighted as bringing stress, uncertainty for young people and challenges in knowing and thinking about what the future may hold:

“He was detained on remand in February and thereafter “fully committed” a week later. However last week his case was reviewed (virtually) by the Court and his solicitor (copied in) made the case for his release. The Sheriff deferred decision-making for a further 7 days to allow the matter to be considered again today. In the intervening period I provided as comprehensive an overview of the multi-agency package of support that would be made available to the young person as possible... Furthermore the court would have had the option to impose a robust bail curfew. Alas, it made no difference. His remand was continued. Moreover, the next Court date is now not scheduled until August 2020 and no trial date has been set. I am deeply concerned about the impact upon this

young man's well-being and how this decision interacts with his human rights" (Respondent from a local authority).

It would appear that COVID-19 has exacerbated existing challenges with delays to processes. In addition, two respondents reported an increase in the use of recorded police warnings and another in young people being held in custody for COVID-19 related offences (see below for further on this). In respect of EEI, in one area challenges in ensuring children and parents knew of a charge, referral to EEI, had access to information and were able to participate in decision-making were cited as problematic, with the same issues with participation noted in respect of Care and Risk Management processes in another area. A further area cited delays in undertaking diversion from prosecution and another in undertaking diversion work. A further respondent highlighted that if technological issues could be addressed, changes could potentially bring positive approaches such as the use of virtual courts and hearings:

"Virtual Court Hearings are a new development too. As long as legal representation is provided, I think these have the potential to be a positive development. For some time I have bemoaned how depressing the Custody Court is in any large Sheriffdom on a Monday morning. Young people go to Court as a social activity to see friends appear, hang out, do deals, noise people up etc. If a lot of the background noise can be taken away through Virtual Hearings and the spectacle removed I think this could help children and young people to focus on more healthy social pursuits"
(Respondent from a local authority).

Participants were asked about supports for children and young people **leaving secure care and custody**, although only a few responses were received which may reflect the low numbers of children currently experiencing such transitions. It would appear that issues that could ordinarily be challenging - such as release from court, which while positive, impacts on planning support packages and accessing suitable accommodation quickly - continue and are even more challenging in the current context. Moreover, matters that would ordinarily be more straightforward, such as ensuring items such as clothing, furniture etc are available; travel home/meet at the gate; and opportunities for home leave/mobility prior to returning to the community, are more problematic owing to COVID-19 restrictions. Two respondents cited regular and positive contact with, and information sharing by, Young Offender Institution (YOI) staff and the high response rate to the use of the Email a Prisoner resource. Creative approaches to accommodation, ensuring practical support is available such as phones, care/liberation packages, clothing, furniture and utilities for accommodation, as well as things to support people to stay at home were cited as important, with further information contained in the case studies below.

Experience of restrictions

Overall children and young people were reported to have **complied well** with the restrictions associated with COVID-19 such as lockdown and physical distancing. However as time has progressed, it has been reported that children and young people have found the restrictions more challenging, with boredom, isolation and understanding the importance of restrictions and their rationale cited. Overall practitioners reported that the **approach from Police Scotland** had been appropriate and cited beneficial help and support to partners. Numerous respondents mentioned interactive, communicative and encouraging as opposed to enforcement or punitive responses being adopted. However, some individual cases were highlighted of children and young people being made subject to Fixed Penalty Notices with the implications this brings and of carers threatened with being made subject to such measures, which have been raised with Police Scotland locally and nationally. Another cited:

"We are having a bit of a spike in ASB and a few police reports have been issued where all have been charged as due to the pandemic charging and questioning all in person was not possible"
(Respondent from a local authority).

The use of EEI in responding to offending has also varied across areas but so too has the operation of EEI processes. Some examples of **wider criminalisation** issues were shared such as children in residential childcare being charged when previously this would have been managed differently; parental contact of the police when situations in the home escalate; and the visibility of children and young people meaning they were more likely to come to the attention of services. In addition, it was reported that reluctance to comply with restrictions has at times impacted on placement decisions and resulted in questioning of the suitability of placement types and suggestions that more restrictive placements were needed. As with the responses from children and young people, practitioners report that there have been some concerns from young people about the fear of leaving their home even for legitimate reasons as this may bring them into contact with the police.

What is working to support children and young people?

Keeping in **contact, communicating with and continuing to support** children and young people was cited as being of the utmost importance in the current situation:

“I believe the young people and parents appreciate weekly contact from me, this is just a welfare check in and they’re, most of the time, happy to chat with me. I enquire after their health, safety, mental wellbeing, family relationships and finances. Some of them are asking questions or like to discuss the coronavirus, they seem interested and wanting information about it” (Respondent from a third sector organisation)

“Weekly check - ins via video or audio chat. Just listening to what the young person has to say or what they are thinking about at the time. I think it just helps to know that there is someone there and the option is there if they want to talk about anything” (Respondent from a third sector organisation)

“Regular contact and encouragement, and being able to explain that we are all in the same boat regarding the difficulties about having to stay in and social distance. To be able to explain to families that the difficulties that they may be experiencing are common (trying to get Young People to stay in etc.) and that they are not alone in facing this experience as they may feel isolated” (Respondent from a third sector organisation)

A range of **creative methods** were cited as being utilised, alongside the importance of an individualised approach and providing the level and type of support as necessary. In addition to phone contact, various technological platforms are being utilised, to keep in touch but also to run activities, competitions, games, eLearning/digital awards and projects. This ability to provide light-hearted and fun support has been identified as particularly important for young people’s morale, wellbeing and mental health. Doorstep, garden or home visits and walks maintaining physical distancing and utilising PPE as appropriate have been important in supporting face-to-face contact and connection. Such contact has been particularly important for more isolated children, and where there are concerns for children’s welfare and wellbeing, or less monitoring and support is available. The benefits of such contacts for children and young people have been clearly evident to practitioners. There have also been creative methods utilised to ensure children who are residing away from family can maintain contact. The case studies below provide further examples of such practice.

The provision of **practical support** has been important, as has signposting and support to **access other services**. Contactless drop-offs of food and supplies; provision of mobile phone credit and data; fuel; phones, tablets and laptops; clothing; monies; and accessing benefit agencies and charitable funding has been particularly crucial given the issues identified above. The provision of information, including on

COVID-19 and tips on staying safe and well, was cited. Participants also reported sending personalised parcels to young people including vouchers for supermarkets, phone top up, or Amazon; magazines, activity and colouring books; activities and worksheets which could be completed independently or virtually with workers have also proved effective in people staying connected, addressing social isolation and ensuring children and young people continue to feel cared for:

“As I’ve mentioned before there are issues around food security, fuel poverty and boredom and if we can do small things in the meantime to address these issues it’s seen as a big help”
(Respondent from a third sector organisation).

Further examples are provided in the case studies below.

Participants stressed the crucial importance of **working with partners** and teams around the child, with positive reports of working across teams within services and across sectors having been shared. This includes sharing information, communication, offering and joining up support to young people and families but also to each other, joined up approaches and trying new approaches. Work with other social work teams, police, education, housing, mental health services, drug and alcohol supports and third sector agencies was cited.

The **dedication of staff, availability, consistency and responsivity** was cited as being crucial in the ability to support children and young people during this time:

“Dedication of staff who are desperate to see young people and visit them brings real benefits”
(Respondent from a third sector organisation).

As such the importance of **supporting staff** and maintaining staff morale was highlighted.

Conclusions

The above information has provided an overview of the responses of children and young people who are currently or have previously been in contact with the youth justice system and practitioners working within the youth justice system to a series of questions posed, with the limitations noted. In total, 48 responses were received from children and young people, with findings from another organisation who had undertaken their own research with a further 22 children questions incorporated where relevant. Thirty six responses were received from practitioners covering 19 local authority areas (almost 60% of Scottish local authorities), with almost three quarters of respondents social work staff and the remainder from third sector organisations. The findings enhance our understanding of the impact of COVID-19 and associated restrictions on these groups.

Across both children and young people and practitioners, the biggest issues reported to be facing children and young people in the justice system are isolation and lack of contact with others. This is in spite of almost all children and young people reporting they have been able to stay in touch with family and friends and many reporting contact with services and supports. Practitioners have developed a variety of welcomed and creative methods to sustain contact, communicate with and continue to support children, young people and their families, the benefits of which are clear. However, the challenges in doing so and particularly understanding what was really going on and how people are managing, along with the difficulties of intervening prior to crisis point being reached, have been highlighted. Such impacts of complying and living with the new restrictions have significantly impacted on children and young people’s mental health and wellbeing across participant groups. While the [Scottish Government’s Route map for moving out of lockdown](#) will see the easing of some restrictions, which these findings would suggest will be welcomed by children and young people, the impact will be understandably gradual and is unlikely to

be universally experienced by all children, young people and their families. In addition, we need to be prepared that the challenging circumstances and the mental health and wellbeing difficulties that COVID-19 has brought or exacerbated may not reduce as Scotland progresses out of lockdown. This reiterates the fundamental importance of practitioners maintaining efforts to keep in touch with children, young people and their families and continuing to provide individualised practical and emotional support. In addition, support to maintain contact with others such as family and friends, including through the provision of devices and the necessary resources to do so, will remain important.

Similarly, boredom, lack of activity and been stuck at home were reported across all participant groups to be significant issues for children and young people in complying with restrictions. As a result, issues in terms of children's and young people's mental health, family conflict, breakdown of home circumstances, substance use and the risks associated were noted. Conversely, the provision of practical support to address basic needs; materials that communicate care; activities to stay busy, including education, training and employment; and access to technology and devices was highlighted as crucial and should continue. In providing such support, the dedication of staff, support to staff and the importance of a partnership approach has been identified as key. Support to families will remain important if the identified potential risks to children are to be avoided, as will the utilisation of [child protection](#) processes as necessary to support and safeguard these children.

The challenges of complying with COVID-19 restrictions but also the positive efforts of most children and young people to do so is another key finding. Children and young people reported that some restrictions were more challenging than others, such as lockdown compared with physical distancing. Likewise, there was suggestion from some practitioners that as time has progressed this has become more difficult, with the benefits of phased reductions of restrictions likely to be particularly felt by respondents but also likely to bring new challenges. It would also appear that there are some children and young people for whom the impact of COVID-19 and associated restrictions has been even more significant, often exacerbating previous experiences and issues such as addictions issues, mental health concerns, lack of support, and care experience, as well as for those with their own children, or without/with insecure accommodation. Particular attention and support to the needs of these children and young people is key.

Overall the findings would suggest that children and young people have had limited contact with the police during this time and that practitioners have largely found the responses by police have been appropriate. It is concerning that some children and young people have reported fear of, and making active efforts to avoid, the police and that a similar number of children and young people who had had contact with the police reported that this had been fair and appropriate as those who had advised this had been a negative experience. This may be owing to the nature of this contact (i.e. resulting in charge, fixed penalty notice or arrest) but the finding that some children and young people reported feeling targeted by the police is an important one. As identified in the [Edinburgh Study of Youth Transitions and Crime](#), the Police have a key role as gatekeepers to the youth justice system and when children are identified as "usual suspects", as the children and young people in this piece reported feeling, they can become drawn into a cycle of contact with the system, with the negative impacts and outcomes this brings, not least in inhibiting desistance and accelerating transitions into the adult justice system. Moreover, the police have a fundamental role in supporting and safeguarding children and young people, made even more important when we know children and young people involved in a pattern of offending, or who are involved in more serious offences, are almost always our most vulnerable, victimised and traumatised. Therefore, the longer-term consequences of negative experiences with the police as reported have further significance. Furthermore, some practice issues have been highlighted by practitioners which have been raised with Police Scotland locally and nationally.

The risks of non-compliance with associated restrictions have however been highlighted as broader than this, for example in terms of wider criminalisation and placement decisions, the risks of which are well

established. It is vital that everyone involved in supporting children and young people adopts a measured, rational position when responding to those who are struggling with the emotional and practical challenges of restrictions. Developing clear plans for responses and contingency plans in conjunction with children, families, and team around the child, so that there are agreed responses with everyone in agreement about their roles and responsibilities within, including the child, is important. Methods to promote consistency of, and rights-based, approaches are important and all practitioners should understand the legislative basis for all decision-making, including [admission to secure care](#) and that deprivation of a child's liberty should be the [last resort](#) if children's rights are to be upheld.

The impact of changes to the operation and processes of the justice system were also mentioned by children, young people and practitioners with these impacts evident in both the short and longer-term. In attempting to mitigate these affects, the monitoring of changes to offence types, responses and ensuring where possible for all offending by children and young people, a response that does not resort to judicial process (such as through EEI and diversion from prosecution) is utilised remains crucial, meaning such processes, supports and timely interventions need to continue to be available. The impact of changes and delays to process, particularly the Children's Hearings System and court, for children and young people cannot be underestimated and should be minimised as far as possible.

Upholding children's rights to participation in youth justice processes are also key. In such uncertainty, the provision of information and support, including to broker the support of other services, remains important. In addition, particular attention should be paid to the experiences of children and young people in and leaving secure care and custody. These findings further support reducing the number of children and young people entering custody and the recent recommendations of the [Children and Young People's Commissioner Scotland](#) that the Scottish Government ensure all children detained in YOIs are individually assessed for release using a human rights-based approach, and children in secure care centres should also have their situation reviewed, allowing a rights-based assessment of whether detention continues to be in their best interests. They also support understanding of the physical, emotional and psychological effects of the pandemic on children and young people and the particular recommendations of the [UN Committee on the Rights of the Child](#) on what governments should do to take a children's rights-based approach to the crisis in respect of protecting children in detention and in breach of government rules.

CYCJ will continue to offer practitioners the support they need to continue to work with children, young people and their families at this time. We will continue to provide our practitioner support service; host regular opportunities for practitioners to meet virtually and share practice, such as WSA leads; forums including on EEI, diversion from prosecution and risk formulation; and update our paper on [Practice implications of Coronavirus for children in conflict with the law](#) and list of websites and resources on [COVID-19: Guidance on supporting young people in conflict with the law](#). CYCJ would also like to undertake a more detailed piece of research to capture the impact of COVID-19 on those involved with the youth justice system, particularly given the changes to such impacts already evident, and the longer-term implications for the system as a whole. We will continue to assess where else we can offer support.

Practice examples

As well as responding to the questions posed, WSA leads, EEI practitioners and NYJAG members were given the opportunity to share short case study examples on how their agency is responding to, and supporting children, young people and families during, COVID-19 for inclusion in this report. The information below is as written and shared by practitioners from local authorities and third sector organisations.

Perth and Kinross Council

In Perth and Kinross, staff in the WSA team have been utilising creative methods to maintain contact with children and young people. We have increasingly utilised technology with Google Duo used for video calls, with children and young people phoned each week, with texts and email used too. In recognition of digital exclusion, we have utilised our Social Isolation Strategy to support children and young people to access laptops/mobile phone and credit/data. In doing so, we have encouraged engagement via Twitter and Facebook. Posts include daily music challenges, pictures of what young people and staff have been up to during lockdown, latest information and support on Covid 19, quizzes, talent and photography competitions etc. This remote support has enabled one young person to access a Level 2 Health and Hygiene qualification due to his work being closed and apprenticeship being put on hold. We have also sent things to young people to show we care and stay connected such as Amazon gift vouchers, including using our C200 fund which is a fund for care experienced young people which staff can voluntarily contribute directly from their salary towards. We have not stopped physical contact with young people, utilising physical distancing measures to for example drop off food to young people in need and helping one young person move from a hostel to a tenancy, with this contact with familiar staff helpful for young people's mental health and wellbeing, particularly where contact with the team is usually weekly. We have also been able to engage young people who we struggled to previously, including one young person who we were able to support to complete a CV and in job hunting. Working with partners has been crucial and in particular we have worked closely with the community police, who are using a restorative approach to support young people who are finding the COVID-19 restrictions more challenging or are needing additional support. In recognition of the importance of caring for staff during this time, we communicate daily on Microsoft Teams and run weekly quizzes to keep morale up.

East Ayrshire Council

East Ayrshire social work recognise the importance of supporting the children and their families during this period of restrictions and limitations in place due to COVID-19. There has been a clear recognition and understanding that the emotional and psychological health of these children will be impacted and that maintaining relationships and contact is crucial to the well-being of these children and young people. Creative methods to support some of the most vulnerable children and young people across different age groups have included:

- Using Joe Wicks to create exercise sessions on digital platforms to do with children, young people and their families but also as part of virtual family contacts.
- For younger children that struggle to grasp the importance of physical distancing or the required 2m separation, practitioners have been using hula hoops as a creative way of physically demonstrating the space that needs to be kept, utilising play to help the children adhere to the restrictions.
- Creating film challenges between practitioners and their young people, involving choosing a film and critically evaluating a theme which both then discuss at their next virtual session. An example was of the role of females in Disney animation Mulan.
- Providing support to those young people who are particularly vulnerable or living on their own, including to cook at home together using PPE, often involving a high level of daily visits and contact during the day and night.
- Liaising with others parts of the local authority to access vehicles that can allow the practitioners to maintain physical distancing whilst picking up and driving young people to attend important appointments such as for mental health, pre-natal care and crucially pick up any young people being released from custody and bringing them home.
- East Ayrshire Justice services are providing COVID-19 packs for individuals returning to the community. This includes a holdall with a folder with information about COVID-9 and safe

practices/telephone numbers or contact details for a number of local services; soap and hygiene/sanitary products; hand gel; anti-bacterial spray; food; and activities such as crossword/word search book. Arrangements are made for a food parcel to be delivered and a home visit is completed for everyone, with information provided on rights to voluntary throughcare.

As the way of working provides limited contact as teams are split to provide rotational cover 1 week in three, then contact with colleagues is also significantly reduced. Some practitioners live alone and the only people they see will be colleagues in the office. Opportunities to have fun within the same limitations as their work with young people but across the teams is supporting morale. In addition testing is in place such that practitioners can be tested within 72 hours to reduce time off and worry as to whether they have COVID-19 or not. The dedication and resilience of the practitioners has been commended and also of the children and young people in how they are responding and managing these difficult times.

Aberdeen City Council

The [youth team in Aberdeen](#) have changed their strategy on use of social media to maximise engagement with young people during COVID-19 and build and maintain a human connection. On March 2, just before the lockdown, the Youth Teams Facebook page had 61 followers; this has increased to 163 on May 20, 2020. The page has regular posts to inform and entertain young people, ranging from video clips from the Chief Social Work Officer, Virtual Head Teacher and one of the Children's Rights Development Assistants, to TikToks demonstrating a therapy idea using items that they think the young people will have available in the home. Staff have listened and responded to what young people tell us they need. For example, young people reported they didn't always know who was answering their comments or who they were taking to online; now workers have their pictures on the page and sign off every post and comment. In addition, the provision of financial supports and food parcels has been vital for many young people. Food parcels contain meals made by staff as we all know the value of a homemade meal to make us feel cared for and the team do this to show the young people that that they are cared for even when they can't be seen in the usual way. This is supported by TikTok videos to show the recipes they have made, which the young people have enjoyed and thanked workers for, with workers taking their feedback on board and ensuring the parcels only contain the meals the young people like.

The Barnardo's RAFT service in Aberdeen has risen to the challenges of the lockdown conditions to maintain contact and engagement with their young people and families. RAFT's has continued to ensure at least weekly face-to-face contact with their young people and families. PPE has been used to allow workers to visit homes, undertake physical distancing walks as well as the occasional kick about in back gardens. However brief the level of contact, the positive impact on young people is obvious in their reaction and continued engagement rates. Young people have responded well to the use of social media and we continue to be surprised by how well so many have adjusted to the current challenges. Workers have used a wide range of forums to engage young people remotely, such as FaceTime and WhatsApp, with examples of young people who weren't engaging pre-lockdown starting to engage, preferring the use of technology to communicate than face to face meetings.

Barnardo's services in Stirling and Clackmannanshire

Barnardo's delivers a range of services across Stirling and Clackmannanshire and the work is supported by volunteers. Services include Youth and Adult justice, substance service and an under 12's service. On March 18, following government instruction Barnardo's took the decision to close their premises, instructing all staff to work from home. Detailed guidance was circulated to all social work departments and relevant external agencies to advise them of the plans to continue to support families in crisis, along with contact details for all managers and a secure email address to ensure confidential information can continued to be shared safely. For every young person/family open to each of the services, an

assessment was completed, to assess risk, identify agreed means of contact and the level of support required during these challenging times. This is reviewed weekly. In addition to creative approaches to maintaining contact with children and young people and the undertaking of support sessions, activities and games, Barnardo's staff have had a pivotal role in directly providing or in brokering access to practical support. The financial difficulties of families have been exacerbated by COVID-19, enhancing the challenges of day-to-day living and impact on physical and mental health, wellbeing and relationships. Support has included accessing Barnardo's funds, Scottish Government Emergency Support Payments, foodbanks and other community based supports. Such support has enabled the provision of:

- Food
- Health and hygiene products including female sanitary products
- Fuel
- Clothing and shoes
- I pads – to enable young people to connect and complete school work
- Mobile phones – to enable continued contact with young people and families
- Mental health and wellbeing packs, including lockdown activities, games, and toys; baking and craft materials; school supplies; and beauty products
- Easter and birthday gifts to communicate care and help children celebrate these milestones
- Computer games – to help keep young people entertained

Rossie Young People's Trust

Young people from Rossie have contributed to a local initiative coordinated by Voluntary Action Angus where paper [compassion goodie bags](#) were made up to be provided to people in the local community. This has included the local Doctor's surgery, Dentist, Sheltered Housing complexes, [Montrose Community Trust](#), young people's family and friends, and to the neighbours of staff who are vulnerable or self-isolating. The bags contained brownies, arts and crafts, badges and rainbows made by the children and young people at Rossie. The young people have also written lovely letters to go in with the compassion goody bag to brighten up the recipient's day and they have enjoyed receiving letters back. On National Nurses Day goody bags were also sent to Fordmill Nursing home in Montrose, Arbroath MIU and Springfield dentist to say "thank you" for all their hard work. In addition, for National Mental Health week, young people added information on various helplines to the bags. Supported by staff from care, education and catering, our young people have also made batches of lentil soup, spaghetti bolognese, bread, rolls and tray bakes to be distributed by Volunteer Action Angus to local people in need.

Rossie have also won the cycling friendly schools award, which particular given the current pandemic is a great achievement. They have shared these inspiring pictures;



Appendix 1

Topic Guide: Experiences of COVID-19 for children and young people in contact with youth justice services

This topic guide has been created to capture the views of children and young people who are in contact with youth justice services or with previous experience of the youth justice system on COVID-19. It focuses on experiences of lockdown, access to services and support, and justice specific issues and experiences. It has been compiled by the Centre for Youth and Criminal Justice (CYCJ) based on issues that have been highlighted to us by practitioners and the issues raised and questions developed by the young people of Youth Just Us, the steering group behind the Staf and CYCJ Youth Justice Voices project. It is intended as a guide for practitioners to use in conversation with young people.

We are keen to hear what children and young people with justice experience think, and to share this information with others. We are aware that, although there are many similar surveys taking place at this time, there is currently a gap in knowledge about the specific experiences of children and young people supported by youth justice services and with youth justice experience. We are very conscious of the pressure that is currently on children, young people and practitioners and how busy people are; however, we believe it is important that these children and young people are heard.

We intend to publish these findings in a CYCJ report, and include them in an Alternative Child Rights Impact Assessment about coronavirus, which is being organised by the Children and Young People's Commissioner for Scotland. All responses will be anonymised in any reporting and only CYCJ staff will have access to the specific information shared.

Using the topic guides

We would like you to use these resources as prompts to guide conversation between you and the child/young person. The intention is that they are used flexibly based on what children and young people are most interested or concerned about and a manner that suits them best. There are three slightly different topic guides for children in the community, in secure care and in HMP&YOI Polmont. However, you may want to ask questions from each list depending on specific experiences.

We would appreciate if you could record information anonymously for each conversation using the template below (or another format that may work for you) and share this with CYCJ by **May 26, 2020**. In doing so, we request that you explain the project to the child/young person using the information sheet below and verbally gain their consent and agreement to this information being shared anonymously with CYCJ. We will also assume that you have explained to the child or young person that if they tell you information that they, a member of their family or someone else is at immediate risk of being hurt or harmed, you have a duty to share this information. You can send any responses to us via cycj@strath.ac.uk or we can arrange to take these verbally over the phone by calling 0141 4448622.

Information for children and young people

The Centre for Youth & Criminal Justice want to hear from you!

We know that you don't often get a say in matters that affect you. We want to change this. Right now COVID-19 is affecting everyone and we want to hear about your views and experiences of lockdown, what has helped and what could be better. We'd like to be able to share this information with the people who can help to improve the support. This includes the Children and Young People's Commissioner Scotland, whose job it is to protect and promote children's rights.

We have asked the people that work with you to talk about COVID-19 and see if you would like to take part. If you are happy to do so, they will ask you some questions and write down your views, so they can share this with CYCJ. We will read all the information you and other young people give us and write about this in a short report. We will put the report on the CYCJ website and share it with people who can help make things better.

We don't need to know your name, but some details about you like your age and gender will help us compare if different people say different things. Apart from CYCJ, your worker will only share the information you give us with other people if you tell them that you, a member of your family or someone else is at immediate risk of being hurt or harmed, as they have a duty to share this information. CYCJ will not share your information and will keep this safe, making sure no one else can see it or can tell who it belongs to.

Your worker will support you, but other sources of support are:

[Breathing Space](#)

[Childline](#)

[NSPCC](#)

[SAMH](#)

[See Me – Pass the Badge](#)

If you are happy to participate, please let your worker know.

Thank you

Topic Guides

Children and Young People in the community

1. How have you found lockdown?
2. What has been difficult?
3. What has helped?
4. What do you think are the biggest issues affecting young people in contact with the justice systems during COVID-19?
5. How have you found social distancing?
6. Have you been able to keep in touch with friends, family and services? If so, how?

7. What would help you to keep in touch with people and involved in things?
8. What, if any, experiences have you had with the Police when out?
9. What can those around you do to help?

Children and Young People in HMPYOI Polmont

1. How have things been in HMPYOI Polmont since COVID-19?
2. What has been difficult?
3. What has helped?
4. What do you think are the biggest issues affecting young people in contact with the justice systems during COVID-19?
5. How have you found social distancing?
6. What do you think would help young people in Polmont at the moment to get through this time? Are there activities or things they could be given?
7. Have you been able to keep in touch with friends, family and services? If so, how?
8. What would help you to keep in touch with people and involved in things?
9. What can those around you do to help?
10. What do you think would help young people when they are released from Polmont during COVID-19? What supports and things should they receive? Are there things that have helped you in the past?

Children and Young People in Secure Care

1. How have things been in secure care since COVID-19?
2. What has been difficult?
3. What has helped?
4. What do you think are the biggest issues affecting young people in contact with the care and justice systems during COVID-19?
5. How have you found social distancing?
6. What do you think would help young people in secure care at the moment to get through this time? Are there activities or things they could be given?

7. **Have you been able to keep in touch with friends, family and services? If so how?**
8. **What would help you to keep in touch with people and involved in things?**
9. **What can those around you do to help?**
10. **What do you think would help young people when they leave secure care during COVID-19? What supports and things should they receive? Are there things that have helped you in the past?**

Template for recording responses

Child/young person's information:

Age: Gender: Setting: Community/HMPYOI Polmont/Secure Care

Experience of the youth justice system: Current/Previous

Responses to topic guide (as applicable):

How have you found lockdown/things been?	What has been difficult?	What has helped?	Biggest issues?	How have you found social distancing?	What would help in you get through?	Have you been able to keep in touch?	What would help to keep in touch?	Police experiences	What would help?	Help when going back to the community

Appendix E



June 2020

Independent Advisory Group Report on Interviews with Police Scotland Officers and Staff

Introduction

1. This document provides a summary of findings from research interviews carried out by Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) on behalf of the Independent Advisory Group (IAG) established to review Police Scotland's use of the emergency powers provided by the Coronavirus Act 2020 and the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.
2. The aim of the research interviews was to glean the perspective of officers and staff involved in using the new powers, including:
 - police officers directly applying the powers whilst working in communities
 - police officers in supervisory positions briefing officers on the use of the powers
 - police officers and staff working in Contact, Command and Control and receiving calls from the public about coronavirus related issues

Methodology

3. The research was limited to one to one interviews and in line with public health guidance, conducted by teleconference. HMICS did not inspect any police briefing materials or other documentation prior to or during the interviews. The methodology and developed question set (Appendix A) were approved by the IAG and were designed to explore the following themes:
 - Training and support around the introduction of the new policing powers
 - Public compliance with the powers
 - Experience of policing the pandemic and using the new powers
 - Lessons for the future as the lockdown changes
4. The HMICS inspection team selected officers and staff for interview from a list provided by Police Scotland, which included front line response, community and supervisory officers. This method provided a degree of randomisation in the selection of officers and staff.
5. In order to gain a countrywide perspective, one local division was selected from each of the North, West and East command areas. Data recorded by Police Scotland were analysed to determine which divisions to select. This was done by examining the total number of interventions, rate of intervention per capita, and proportion of interventions involving enforcement. In respect of call handling, a selection of officers and staff from the police control rooms at Dundee, Govan and Bilston Glen were interviewed. This sample comprised of staff from Service Centres and Resolution Teams, who provide frontline advice, support and assistance to the public.
6. A total of 54 interviews were conducted between Monday the 1st June and Friday 5th June. This included an initial six pilot interviews, which provided the inspection team the opportunity to 'sense check' the questions and interview arrangements.

Appendix E

Interview Sample

7. The interview sample, whilst limited in number given the timeframes involved, provided a cross section of frontline roles and geographical areas to capture the experience of policing across different communities and comprised of the following:
- Edinburgh (E) Division, two front line response officers, two community officers and two supervisory officers (these were the pilot interviews)
 - Greater Glasgow (G) Division, four front line response officers, four community officers and four supervisory officers
 - Forth Valley (C) Division, four frontline response officers, four community officers and four supervisory officers
 - Highland and Islands (N) Division, four front line response officers, four community officers and four supervisory officers
 - Contact, Command and Control (C3) Division, six Service Advisors and six Resolution Team members

Key Findings

8. The research themes and responses are explored in broader detail however the following high level feedback from officers and staff has been summarised:
- Overall view was that Police Scotland responded well in terms of guidance and instruction to officers given the pace with which the legislation was enacted
 - There was sufficient information in the briefings and guidance to enable officers and staff to deal competently with issues arising from the restrictions
 - Concerns were raised that as restrictions continue to alter, the role of the police will become more challenging, and clear guidance for the police and the public will be required
 - It would be beneficial to have a formalised approach across Police Scotland for sharing learning as to how the powers are applied
 - The “four Es” approach (Engage; Explain; Encourage, and Enforce) has been easy for officers and staff to understand, and is in keeping with the force values, policing tone and style
 - The emphasis of the police has been on engaging, explaining and encouraging compliance, with enforcement being the last resort
 - The vast majority of the public have been compliant with the legislation and supportive of the role undertaken by police officers and staff
 - Communicating with the public using the continuum of the four Es has been effective in maintaining the fundamental principle of policing by consent
 - As restrictions have been eased there are early signs in some areas that public compliance is waning and this has been more challenging for the police
 - The lack of power of entry to property was highlighted as a gap in police powers
 - The redeployment of officers from corporate departments to support the frontline was welcomed

Appendix E

- The introduction of the Contact Assessment Model and the use of resolution teams has been well received by frontline officers
9. The report will now take each research area in turn and summarise the interview responses.

Training and support around the introduction of the new policing powers

10. Overall, the officers and staff interviewed were positive about the force and divisional responses to the introduction of the emergency legislation. It was widely acknowledged that the legislation was enacted with very little time for the force to consider and subsequently prepare. The most prevalent view was that in light of the circumstances the force had done as well as could be expected in what was/is a rapidly moving situation. Briefings and guidance issued allowed frontline officers and staff to deal competently with issues that arose. Many interviewed stated that as restrictions continue to be eased, the role of the police will become more challenging and additional guidance will be required.
11. There has been no “trainer-led” training provided in relation to the new powers: information has been cascaded via briefings and these have often been by email or in PowerPoint form, relying on self-briefing. On some occasions the briefings have been conducted by supervisory officers face-to-face, however that has been in dependent on the physical working arrangements of that area alongside current guidance.
12. Some expressed a view that cascading information too early in PowerPoint format was less helpful and often led to lots of “what if?” questions. A proper training package would have been preferable, including a knowledge check with scenarios to ascertain the level of understanding of officers and staff. Many stated that having ready access to officers and staff with a more in-depth understanding of the legislation and powers would have been helpful. Given the time limitations, it was acknowledged that this may not have been possible.
13. Dependent on their role, some officers and staff had more time available to digest the information, re-reading it on several occasions to ensure they understood. Those officers in response roles did not have the same opportunity, as they were often sent to calls as soon as they had been briefed.
14. From the interviews, HMICS found most officers had a good level of knowledge and understanding of the legislation and of their powers. There were however a small number of officers and staff who appeared less confident and may have benefited from a more cohesive training package, taking account of different learning styles.
15. The force briefings followed the UK police approach, characterised by the four Es: Engage; Explain; Encourage, and Enforce. This continuum of intervention allowed officers to apply their discretion. The use of the four Es approach was seen as positive by the officers interviewed and in line with the manner in which they go about their duties in general. In this respect officers and staff found it easy to remember. Officers interviewed were of the view that the policing tone and style (use of four Es) had remained consistent throughout the period, with a clear focus on preventing the spread of the virus.
16. Many interviewed thought there are too many grey areas in relation to what is law and what is guidance. It was the view of some that it may have been helpful had this been clearly separated in briefings and in public messaging. Officers advised there had been considerable debate in police stations amongst officers in relation to what constituted an offence and what did not.

Appendix E

17. During the pilot in Edinburgh City Division, the introduction of daily divisional briefings for supervisors with a senior officer was referenced, allowing peer discussion, and this was seen as positive and supportive. Some people in other parts of Scotland mentioned that having such a daily update with examples provided would have helped.
18. The vast majority of officers and staff interviewed felt supported by their line managers to do their jobs and to use the four Es. Almost all stated that the emphasis from senior officers was to be on the first three Es and that enforcement was to be seen as a last resort. Of those officers interviewed, not many had used enforcement and amongst those who had, this had been only on a small number of occasions.
19. Some officers referenced people in their stations having issued Fixed Penalty Notices (FPNs) and when these were checked by senior officers, some FPNs were subsequently rescinded. It is not clear if this was because the ticket had been incorrectly completed or if the first three Es had not been used effectively on these occasions. The issue officers seemed to have with this was not so much that they had been rescinded, but lack of feedback as to the reason. Officers were discussing scenarios with each other, and feedback and learning could have been shared from this to increase understanding and confidence.

Public compliance with the powers

20. The majority of the public have been and continue to be compliant and supportive of the police. Officers stated that without this level of compliance it would have been difficult to police effectively.

Patrons and staff were found within a licensed premises and in breach of the legislation, and 13 enforcement tickets were issued. This incident subsequently attracted significant interest and 950 out of 1000 entries on a social media site praised the police response.

In rural areas popular with tourists, officers faced an increasing number of people arriving at holiday homes. Despite being in clear breach of public health guidelines, people challenged officers and refused to comply with the direction given. The consequence was the local community, who were adhering to the rules of lockdown, felt the police action was ineffective.

21. Officers interviewed said challenges emerged with some members of the public who were living chaotic lifestyles and seemed intent on non-compliance, regardless of attempts to utilise all strands of the four E approach. On these occasions this appeared to be due to an indifferent attitude to the overall public health objectives, the legislation and consequences for breaching same, therefore enforcement was not seen as an effective deterrent. Support from partner agencies for vulnerable groups such as the homeless and those with substance misuse issues was praised, although it was felt in some areas this support should have been put in place at an earlier stage.

Some local hotels were converted into temporary hostels providing shelter and food to the homeless, however police officers found that despite this support network, many individuals from vulnerable groups continued to wander the streets in groups during lockdown without any social distancing. Despite continued engagement with this group, the new police powers had little influence over this behaviour.

Appendix E

22. The responses indicate there has been a consistent policing tone and application of the approach across communities, taking account of individual needs or support required.

Responding to a call from the public about people gathering in breach of lockdown rules, police officers found a group of autistic children and their carers on a day trip from the city. Following engagement with the group, the police officers recognised this as a regular and necessary activity for the children's wellbeing. Advice was given about reducing the risks associated with extended travel, and no enforcement action was taken.

23. Some officers highlighted that there were instances of people with mental health issues who were finding it difficult to cope with lockdown, as they were not seeing friends or family and not having the same access to support mechanisms.

24. Officers and staff were aware that the priority of the police has remained to protect the public, prevent the spread of the virus, and save lives.

25. There are early signs in some areas that public compliance is waning and this has been more challenging for officers as restrictions have been eased. It appears that whilst the majority of the public remain compliant, there is a growing number of people who are not and it is difficult for police to deal with large numbers of people. Officers described the easing of the restrictions coinciding with remarkably warm weather as the "perfect storm", which led to a surge in numbers of people congregating in parks and at beauty spots.

Officers experienced an influx of people visiting rural tourist areas from towns and cities in the central belt. Many visitors were setting up tents and drinking alcohol to avoid being instructed by the police to drive home. Due to the significant numbers of people, the policing approach remained advisory whilst ensuring there was no anti-social behaviour.

26. There appears to be an increased level of confusion regarding the guidelines and law amongst police officers, staff and the public as the restrictions have eased. Control room staff highlighted a significant increase in calls from the public reporting matters which were guidelines and non-enforceable. Specific challenges around this were highlighted in relation to the term "essential workers", what work is essential and what is not. Officers found it difficult to challenge this, with different approaches in different parts of the UK not helping and officers stated people would often point to this to excuse their behaviour.

27. Call centre staff have also experienced an increase in calls from the public asking police for advice to carry out some activity, almost seeking permission from the police. Additionally, there has been an increase in neighbour dispute calls as more people stay at home and associated noise complaints. Staff advised in the majority of instances the Resolution Teams were able to resolve the matter by telephone.

28. Officers also spoke about groups of young people gathering following the easing of the restrictions. Some of these gatherings appeared to have been organised on social media and took place in remote areas. A particular challenge was highlighted in dealing with groups of young people (under 16) who refused to contribute to the wider public health objective, as enforcement was not viewed as a deterrent in these instances.

Appendix E

29. On the vast majority of occasions, the first three Es have proved effective although some officers did say that this can be time consuming with some members of the public who want to debate the legislation. On the small number of occasions where officers have had to use enforcement it was generally due to the person's blatant disregard for the legislation and the public health objectives. Overall the public have been appreciative of the police role in supporting the public health objectives. The clear public messaging in respect of the four Es detailing how officers would be interacting was deemed to be beneficial to officers and staff in maintaining strong relationships across communities.

Experience of policing the pandemic and using the new powers

30. There was a generally positive view of the experience of policing the pandemic and the introduction of the new powers in terms of there being a consistent style, tone and approach. Some of the measures highlighted include:

- Consistent messaging in the form of briefings and guidance
- Supervisors on patrol observing officers exercising the use of the four Es
- Supervisory checks on all tickets issued
- Divisional quality assurance check, with evidence of some tickets having been rescinded
- Use of guidance posters prominent throughout police buildings has reinforced messaging
- Within C3 information has been displayed on screens enabling instant accessibility
- A frequently asked questions document which is available on the force intranet
- The covid-19 force intranet site can be easily located and navigated by all staff
- Most officers found the aide memoir to be an accessible resource whilst on patrol

31. In urban areas most officers stated they used the first three Es frequently throughout the course of their day. This would typically involve speaking to people to ascertain why they are out and what they are doing. In the main, officers found using the four Es approach straightforward and in line with the manner in which they would typically go about their business.

Some people found the public health guidance and the law difficult to understand. An officer dealt with one young person suffering from mental health issues who was breaching the regulations, but the officer was able to help the person return home rather than issue a Fixed Penalty Notice.

An officer commented on being constantly aware of the risk of inadvertently spreading the virus when engaging with members of the public. This influenced decision making when moving through the four Es, knowing that moving to enforcement was likely to breach social distancing, therefore the emphasis was on continuing to encourage people to comply without resorting to enforcement.

Appendix E

32. Officers serving in rural locations expressed a different experience at times. Whilst their local communities have in the main been compliant, the issues have been with those travelling to the area from elsewhere to visit a second home, visit scenic locations, or to go hill walking. During the last weekend in May, the good weather had a significant impact, and officers said they were unable to deal with the volume of people.
33. One potential gap in police powers that was highlighted is the lack of power of entry to property. Some officers explained that in circumstances where there is a social gathering in a house in breach of lockdown, there is no power of entry. This requires police being able to use the first of the three Es to talk to the occupants and encourage them to disperse. If there is no engagement from the outset by the occupants, the police have no power of entry.
34. The Force Reserve Team has been deployed in some areas to provide additional support, although it was reported accessing and securing assistance of this team can be difficult in some locations.
35. One of the interview questions related to the use of force when officers were exercising the new powers. From the responses, it appears force has seldom been used given enforcement is very much seen as a last resort. Some officers referenced having an awareness of offenders having spit hoods applied whilst being arrested for other matters, due to them coughing aggressively towards police.
36. The enforcement element, specifically the Fixed Penalty Notice, was seen by some officers as ineffective given some individuals indicated that they would refuse to pay any fine and would not adhere to any lockdown rules. This led to some frustration by officers when trying to enforce the public health message.
37. In the Contact, Command and Control (C3) environment, all calls are risk assessed in relation to covid-19 by call takers, who ask a series of questions to ascertain whether it is safe for officers to attend. Some officers stated this practice appears to have lapsed in recent weeks. This has been highlighted to local supervisors by the officers who raised this.
38. In the early stages following lockdown, staff in C3 experienced some difficulty in referring callers to partner organisations and support services as many organisations have had to reduced public accessible services or change their operating model.
39. Community officers told us their work with partners was affected by the absence of face-to-face meetings and school liaison. Some adapted to using telephone calls and social media, but this seemed to vary depending on the officer and the local context.

A community officer working in an area of multiple deprivation described engaging on a daily basis with around 50 individuals with complex needs, including substance misuse and addictions, which did not change due to the pandemic. The officer made a conscious decision not to issue Fixed Penalty Notices to this group of vulnerable individuals, knowing the value of maintaining a strong relationship in the long term, and being realistic about the impact issuing FPNs would have on the group's behaviour.

Lessons for the future as the lockdown changes

40. As progressive changes to the public health guidance are made, many officers were concerned about the complexity this may bring in relation to the understanding and compliance with the legislation and impact this could have on policing. Throughout the interviews, the importance of maintaining clear guidance for the public and for the police in the coming period came across strongly.

OFFICIAL

Appendix E

41. It was highlighted that it is important to understand and respond to local implications of lockdown easing, particularly in prominent tourist locations. Consideration should be given to bespoke briefing and additional resource to meet specific needs. Officers who have recently gained experience in using the powers may be a valuable resource to consider using in an advisory role.
42. Further lockdown fatigue and a continuing easing of restrictions may lead to an increase in disorder, particularly when licensed premises re-open.
43. Officer safety concerns were expressed as restrictions continue to ease, some officers are worried about putting themselves and their colleagues in situations where they may be vulnerable. These concerns related to becoming exposed to covid-19.
44. The redeployment of officers from some departments to support the frontline has been positive. Many stated they had never had so many officers on duty and in some areas this has resulted in more proactive policing, and increased levels of public engagement with more officers on foot patrols.
45. During this period there has been more effective triaging of calls prior to allocating resources, which has created capacity in response teams. The forcewide roll out of the Contact Assessment Model and in particular the impact of the Resolution Teams has been positively received by front line officers. Some officers and staff questioned whether the organisation would have the ability to cope with the level of demand without the Resolution Teams.
46. Further observations from officers and staff interviewed in relation to policing during the pandemic and future lessons have included:
 - Regular updates for all officers and staff across the force is critically important, a small number of officers spoke of hearing of changes on the news
 - Teleconferences and video conferencing has cut down time and travel for internal meetings
 - Use of scenario based training examples would help officers understand how to deal with some of the more challenging areas around enforcement
 - It would be helpful to share learning and understand the reasons why some Fixed Penalty Notices have been rescinded
 - Proactive public messaging leaflets for cars left unattended at beauty spots may help reduce such incidences and prevent repeat visits
 - Some officers highlighted more effective partnership working with local authorities and other resilience partners would have been beneficial
 - On offering comment on the wider impact on the Criminal Justice system, the use of virtual courts has been seen as a positive development

Conclusion

47. This report outlines an initial summary of the responses of the 54 officers and staff interviewed and enabled HMICS to capture the varied experience and views of those officers and staff. Further analysis of these responses may be required as part of any broader research or indeed assist in the design of any wider surveying of staff or the public.
48. By far the strongest theme to emerge is the importance of a clear, consistent and well communicated policing approach for both the public and police to understand, and thereby support the public health objectives.

Appendix E

Appendix A

THEME	KEY QUESTIONS
<p>1. Training and support around the introduction of the new policing powers</p> <p><u>Areas for discussion:</u></p> <p><i>Extent and quality of training and guidance over use of the new powers</i></p> <p><i>Degree of support with using the new powers</i></p>	<p>1.1 What is your role within Police Scotland?</p> <p>1.2 What is your view on the level of training and/or guidance you received on interpreting and applying the new powers?</p> <p>i. How well did this prepare you for doing your job (particularly in exercising/supervising the exercise of the 4 Es)?</p> <p>ii. Did you feel there is sufficient clarity in distinguishing between the law and the guidelines?</p> <p>iii. Do you have any thoughts on improvements to the training or additional training needed?</p> <p>1.3 How well supported have you felt in doing your job (particularly in exercising/supervising the exercise of the 4 Es)? (Probe: support from whom and in relation to what?)</p>
<p>2. Public compliance with the powers</p> <p><u>Areas for discussion:</u></p> <p><i>Level of public compliance with the law and guidance and how this changed over time</i></p> <p><i>Reasons for non-compliance amongst different sectors of the population</i></p>	<p>2.1 How would you describe the public’s compliance with the new policing powers (the 4 Es)?</p> <p>i. How would you describe the degree of public support/compliance you have received when doing your job?</p> <p>ii. What factors have prevented some people complying with the new laws? (Probe: vulnerable, susceptible or disadvantaged groups, those with disabilities or hidden disabilities, those living in poverty, children and young people, etc.)</p> <p>iii. Do you think the level and nature of compliance has changed over time? If so, what (if any) difficulties has this posed for you?</p>
<p>3. Experience of policing the pandemic and using the new powers</p> <p><u>Areas for discussion:</u></p>	<p>SUPERVISORY OFFICERS 3.1 – 3.4</p> <p>3.1 What impact has the lockdown had on your day to day work?</p> <p>3.2 How easy or difficult has it been to supervise the exercise of the new powers (the 4 Es) ?</p>

Appendix E

<p><i>Impact of lockdown and legislative change on day-to-day policing activities and roles (frontline, supervisory and C3)</i> <i>Experience of exercising the powers on the frontline (frequency, circumstances, and consistency)</i> <i>Specific challenges for policing practice, management and call handling</i></p>	<p>i. How frequently have officers used the new powers in the course of their day to day activities?</p> <p>ii. Do you feel there is consistency amongst officers in terms of how they have used the powers?</p> <p>iii. Have you been aware of any particular issues with officers using the powers more in relation to certain people or groups (e.g. susceptible groups)?</p> <p>iv. Have there been occasions when officers did not use the first 3 Es effectively? What did you do about this?</p> <p>v. Have there been occasions when officers did not use the last E effectively? What did you do about this?</p>
	<p>3.3 What are the main challenges or difficulties you have encountered in exercising the powers?</p>
	<p>3.4 To what extent, and in what circumstances, have you needed to use “force” (e.g. spit hoods, restraint, tasers, CS spray, etc.)</p>
	<p>FRONTLINE OFFICERS 3.5 – 3.8</p>
	<p>3.5 What impact has the lockdown had on your day to day work?</p>
	<p>3.6 Overall, how easy or difficult have you found it to exercise the new powers (the 4 Es)?</p> <p>i. How frequently have you used the new powers in the course of your day to day activities? (Probe the different types of enforcement)</p> <p>ii. Could you describe the typical circumstances you have used the powers? (Probe for where and who)</p> <p>iii. Have you taken a different approach to using the powers with some people/groups compared to others? (Probe to explore; if yes, why was this the case?)</p> <p>iv. Have there been occasions when you did not use the first 3 Es effectively? Why do you think this was</p>

OFFICIAL

Appendix E

	<p>the case?</p> <p>v. Have there been occasions when you did not use the last E effectively? Why do you think this was the case?</p> <p>3.7 What are the main challenges or difficulties you have encountered in exercising the powers?</p> <p>3.8 To what extent, and in what circumstances, have you needed to use “force” (e.g. spit hoods, restraint, tasers, CS spray, etc.) while exercising the powers?</p> <p>C3 OFFICERS AND STAFF 3.10 – 3.18</p> <p>3.9 What is your role within C3?</p> <p>3.10 In general, how has the lockdown affected C3 colleagues?</p> <p>3.11 What impact has the lockdown had on your day to day work?</p> <p>3.12 How have calls for service changed in the context of the pandemic and the lockdown?</p> <p>3.13 What have the main challenges been around responding to calls for service?</p> <p>3.14 has the policy of ‘limitations on attendance’ impacted on officers and staff?</p> <p>3.15 How have members of the public responded to the lockdown?</p> <p>3.16 there been sufficient capacity to deal with changing nature of demand and, if/when not, what were the reasons?</p> <p>3.17 What do you anticipate will happen to calls for service as the lockdown starts to ease?</p>
<p>4. Future lessons</p> <p><u>Areas for discussion:</u></p> <p><i>Concerns and expectations for</i></p>	<p>4.1 What (if any) concerns do you have about policing as the lockdown starts to ease and the law/guidelines change?</p> <p>4.2 What, if any, improvements or innovations have</p>

OFFICIAL

Appendix E

<i>policing as the lockdown starts to change</i> <i>Key lessons learned during this period</i>	been achieved in policing over this period?
	4.3 What would you say is the main thing you have learned from using the new powers that needs to be recognised by the IAG?
5. Conclusion <i>This section serves to wrap up the discussion and ascertain key learning points</i>	5.1 To sum up, reflecting on what we have talked about today what would be your main recommendations for improvement?
	5.2 Why is this important?
	5.3 Is there anything else we haven't talked about that you think is important here? And what might be especially important for us to feed back to the Independent Advisory Group



**Interim report on data for the Independent
Advisory Group on Police Use of Temporary Powers
related to the Coronavirus Crisis**

**Professor Susan McVie OBE FRSE
Dr Ana Morales
Dr Fernando Pantoja
School of Law, University of Edinburgh**

28th June 2020

Report Structure

	Page
Executive Summary	4
1. Introduction	8
2. Priority Setting and Data Gathering	9
2.1 Data sources	9
2.2 Structure of the report	9
3. Police Scotland's use of the temporary powers	10
3.1 Extent of use of interventions	10
3.2 Geographical profile of interventions	10
3.2.1 Number of interventions	10
3.2.2 Rate of intervention across Command Areas	11
3.2.3 Rate of intervention across Divisions	12
3.2.4 Geographical profile of intervention type	15
3.2.5 Geographical pattern of dispersals	17
3.2.6 Geographical pattern of enforcement	18
3.2.7 Geographical pattern of forcible removal	19
3.2.8 Geographical differences in rate of intervention	20
3.3 Change in use of interventions over time	21
3.4 Context of intervention use	24
3.4.1 Locus of encounter	24
3.4.2 Size of gatherings	25
3.5 Comparison with other countries	27
3.6 Impact of pandemic on wider policing context in Scotland	27
3.6.1 Change over time in police incidents recorded	28
3.6.2 Change over time in police resource allocation	29
3.6.3 Change in incident and resource allocation by crime type	30
4. Public views about police use of the powers in Scotland	38
4.1 Profile of responses to the Citizen Portal	38
4.2 Impact of the pandemic	38
4.3 Knowledge and experience of the policing powers	39
4.4 Opinion of police contact during lockdown	39
4.5 Opinion of police use of the powers	41

5.	Public complaints about police use of the powers	42
5.1	Number of complaints before and after lockdown	42
5.2	Number of complaints with frontline resolution	43
5.3	Rate of complaints across Divisions	45
5.4	Difference in complaints compared to previous year	47
5.5	Number of Operation Talla complaints	48
6.	Concluding points	50
 Appendix 1		 52

Executive Summary

Police Scotland's use of the temporary powers

Number of interventions

- Between 27th March and 17th June 2020, there were 53,112 interventions using the temporary policing powers recorded in Scotland.
- Over ninety per cent of all interventions recorded involved police using their powers of dispersal, while less than one in ten encounters resulted in enforcement.
- Consistent with Police Scotland's messaging around the 4 E's, police officers have increasingly relied on engagement, explanation and encouragement as the lockdown has progressed.
- The number of interventions recorded under the temporary policing powers was highest in the West Command Area, with a third of all interventions occurring in Greater Glasgow.

Rate of interventions

- Taking account of population size, the rate per capita of all types of intervention was highest in the West of Scotland, although there was less difference in the rate of arrest between the West, East and North of Scotland.
- Difference in rates of intervention across Divisions are likely to have been influenced by a range of factors, including people travelling to parks, beaches and beauty spots and by differences in available policing resource.
- Argyll and West Dunbartonshire had by far the highest rate of intervention per capita. When taking account of police officer numbers, the rate of intervention in this Division was even higher and demonstrates by far the highest level of pandemic-related policing activity within Scotland.
- Greater Glasgow also had a high rate of intervention compared to most other Divisions, but when police officer numbers are taken into account the rate of interventions was more proportionate to some other Divisions.

Geographical profile of intervention type

- There was variation between Divisions in the relative use of the different intervention types during the early weeks of lockdown; however, this has reduced over time and there is now a fairly consistent picture in use of the powers across Divisions.
- Dispersals – especially those involving engagement and explanation - are by far the most common type of intervention used by officers across all Scottish Divisions.
- Use of Fixed Penalty Notices (FPNs) does vary across Divisions, although the differences have reduced significantly over time.
- Numbers of arrests are very low, but some Divisions with a very low number of interventions overall have had a higher than average rate of arrest.
- It is possible that officers in some parts of Scotland may at times have felt the need to use enforcement more often than those elsewhere.
- Nevertheless, the overall picture is one of broad consistency in relative use of the different powers across Divisions.

Change in use of interventions over time

- Temporal analysis shows a steady increase in police use of the temporary powers during April, followed by generally decreasing pattern punctuated by large spikes in activity during May and June.

- Large spikes in police activity typically coincide with three factors: weekends and holidays; hot and sunny weather; and public communications around changes to the lockdown.
- Spikes in policing activity primarily involved greater use of dispersals, not enforcement.
- Use of FPNs as a proportion of all interventions was highest during the first week that the powers came into being, but has gradually diminished over time.
- There is no single temporal pattern in the use of the police powers across Divisions, but some Divisions show similar trends to others.
- Police use of the temporary powers has reduced substantially since Phase 1 of lockdown began.

Context of intervention use

- The majority of interventions occurred in a public place (e.g. a street, park, beach or beauty spot), with just under one in five occurring in a private place (e.g. a residential dwelling or other building).
- There was a much greater use of sanctions when policing breaches of the lockdown in private places (e.g. house parties) compared to breaches in public spaces.
- Although gatherings of three or more people were banned, half of all encounters recorded by Police Scotland involved only one or two people. Less than 1% of encounters involved 50 or more people.
- Dispersals were most likely to involve larger gatherings of people, while incidents involving an arrest or a FPN were most likely to involve a small number of individuals.

Comparison with the wider UK

- It is difficult to provide an accurate comparison of policing activity during the lockdown in Scotland with similar activity in other parts of the UK, as there is little comparable data.
- Comparison of FPNs issued shows considerable variation between countries, with Wales having the highest rate of FPNs per capita and England having the lowest.
- The rate per capita of FPNs in Scotland was 2.1 times higher than that for England; while the rate in Wales is 2.6 times higher.
- Caution is required in interpreting these cross-country comparisons due to small numbers, and no strong conclusions can be drawn from these figures.

Change over time in police incidents recorded

- Taking account of the wider impact of the pandemic on policing demand and response during lockdown, the level of demand on Police Scotland was lower during the lockdown than previous months.
- Compared to the same period last year, the number of incidents recorded by Police Scotland in 2020 was much lower in the four weeks immediately before and after the lockdown.
- Overall, there was no discernable effect of the pandemic on the likelihood of Police Scotland responding to incidents that were recorded during this time.
- The reduction in demand but stable level of resource allocation indicates that Police Scotland was able to deal with the public policing requirements of the pandemic in terms of capacity.

Change over time by incident type

- Incidents recorded as '**Operation Talla**' (the UK policing response to the pandemic) increased dramatically in the early weeks of lockdown, peaked in late April, and remained high throughout May.
- However, there were distinct differences in patterns of demand and response across incident types

- **'Assisting the public'** incidents fell immediately prior to lockdown and remained lower than normal. A reduction in allocation of police resource to deal these types of (mainly low level) incident may have been due to resource being redeployed to other areas of operational business.
- **'Public nuisance'** calls (mainly relating to people breaking the Regulations) increased dramatically during lockdown, although warnings from Police Scotland that the high call volume would 'reduce response times for real policing matters' did result in a reduction in public nuisance calls. Nevertheless, there was an increase in resource allocation for this type of incident, compared with the same period in 2019.
- **'Road traffic'** incidents reduced significantly as a result the pandemic. However, the proportion of incidents resulting in police resource allocation was higher than the equivalent period in 2019.
- **'Thefts'** reduced sharply in the two weeks immediately prior to and after lockdown. The rate of police resource allocation to theft incidents was lower than expected during the lockdown period, which was not explained by seasonal variation.
- **'Domestic violence'** incidents did increase following lockdown, but when seasonal variation is taken into account, this increase was not significantly higher than 2019. The rate of resource allocation to domestic violence cases remained very high during lockdown, but was slightly lower at points when incident numbers increased.
- **'Assaults'** declined by around 45% around the time of the lockdown and remained fairly low and stable throughout the first two months of lockdown. Police allocation of resource for assault incidents during lockdown was around 75-80%, which was lower than the same period in 2019.
- **'Noise complaints'** increased substantially as a result of the pandemic, and the police did allocate proportionately more resource to noise problems during the lockdown (most probably in response to house parties).
- **'Neighbour disputes'** also increased substantially during the first two months of lockdown. But, while noise complaints saw an increase in resource allocation by the police during lockdown, the reverse was true for neighbour disputes.

Public views about police use of the powers in Scotland

- A Citizen Portal was established to collect information from members of the public about their views on, and experiences of, the temporary police powers in Scotland.
- There is a lack of diversity amongst those who have responded to the portal so far, with more responses needed from younger age groups, those belonging to a wider range of religious and ethnic groups, and those with disabilities.
- All respondents said that the Coronavirus pandemic had impacted on them to some extent, but policing was rarely given as one of the factors that had impacted on them.
- Only a few people reported that they and/or a friend or family member had experienced police contact during lockdown, but most said that the police had treated them with fairness, respect and equality.
- Nevertheless, people were equally divided between those who said they were very or quite satisfied and those who were very or quite disappointed with the police contact.
- Most people had not changed their opinion of the police since the start of the lockdown, while the remainder were divided between those whose opinion had improved and those with a worse opinion.
- People's expressed a wide range of views on the policing of the pandemic and the use of the temporary powers in Scotland, which were both positive and negative.
- Some people expressed appreciation for the frontline role of police officers in supporting the public health crisis and were particularly complimentary about local policing.

- The challenges faced by the police in exercising their powers was recognised, particularly in relation to lack of clarity between the law and the guidance, but also in terms of the undermining impact of high profile breaches.
- Amongst those with more negative views some thought the police use of the powers was excessive and unnecessary, while others thought the police should use their powers more frequently.
- Some people were supportive of Police Scotland's 4 E's approach and their determination to use enforcement only as a last resort, while others thought it had been a factor in non-compliance with the law.
- There was a sense of frustration amongst those who felt the restrictions were no longer necessary.

Public complaints about police use of the powers

- There was no significant increase in complaints in the two months following lockdown compared to the prior two months, or compared to the equivalent two months of 2019.
- There were some differences in the number and rate of complaints received by Division, but only Lanarkshire saw a significantly increase in the number of complaints (note that Lanarkshire also had the highest rate of FPNs).
- The number of Operation Talla complaints received during lockdown was counteracted by a reduction in the number of 'standard' complaints during this period.
- During lockdown, there was an increase in the proportion of complaints being dealt with by frontline resolution (FLR), which typically involves explanation, apology or assurance. This was true across all Divisions, but especially those in the West.
- The higher resolution rate suggests that the complaints during lockdown may have been less serious than normal; however, it is also possible that the FLR method was used more frequently following lockdown.
- Overall, there was no evidence of a surge in complaints against the police as a result of the use of the temporary powers; no evidence of systematic bias across Divisions in the number or rate of complaints received; and some evidence to suggest that most of the Operation Talla related complaints were of a trivial and non-criminal nature.

1. Introduction

In response to the Coronavirus pandemic, the UK and devolved governments imposed a national 'lockdown' on 23rd March 2020 with clear advice to stay at home to avoid transmission of the disease, thus helping to save lives and enable the NHS to cope with the anticipated increase in demand. Two days later, the Coronavirus Act 2020 was passed by the UK Government and received Royal Assent on the same day. And on 27th March, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations ('the Regulations') were laid before the Scottish Parliament and also came into force the same day. The Regulations provided a legislative framework 'for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland (whether from risks originating there or elsewhere)' (Section 45C).

While the public were expected to comply with the law and related guidance for the sake of public health, the Regulations gave Police Scotland temporary new powers of enforcement to ensure compliance with the law where necessary. These powers were extraordinary in that they placed unprecedented restrictions on the freedom of members of the public to leave home, associate with others and go about their daily business. While recognising that the powers were necessary to support public health efforts to keep people safe and prevent the spread of the disease, it was also recognised that they placed an enormous burden on the Scottish public. For that reason, Police Scotland emphasised that police officers' approach to using the powers would be in keeping with the spirit of 'policing by consent' and focus on four E's: primarily *engaging* with the public and *explaining* the reasons for complying with the lockdown where possible, *encouraging* compliance where necessary, and moving to *enforcement* only as a last resort for flagrant breaches of the law.

In view of the extraordinary nature of the powers, Police Scotland (PS) and the Scottish Police Authority (SPA) established an Independent Advisory Group (IAG) to provide scrutiny of this new 'public health' model of policing and the use of the temporary powers. The aims of the IAG were to ensure that the temporary powers of enforcement were being used appropriately and only as a last resort; and to explore the views of the police and public around the use of, and compliance, with the powers. The IAG set out to gather appropriate data to assist in its deliberations and help it make recommendations to the SPA and PS about the current and future use of the police powers in relation to the pandemic.

The IAG was mindful of placing undue burden on PS during an exceptionally busy period, so only data considered essential to the IAG under its Terms of Reference (ToR) was collected.¹ The data collection was supported by the SPA, HM Inspector of Constabulary in Scotland (HMICS) and PS's Operation Talla Information Collation, Assurance and Liaison (OpTICAL) Group.

This interim report includes some of the data collected so far to support the work of the IAG. The main focus of the report is on the police use of the temporary powers, spatial differences in policing practice and temporal change in the use of different intervention types. The report also includes information on public views of the use of the powers and complaints (Coronavirus and non-Coronavirus related) against the police during the lockdown. The period covered by this report extends from January to June 2020, with a primary focus on the period of lockdown from 27th March onwards when the policing powers came into being. Depending on the data source used, not all data were available for the full time period.

¹ The terms of reference can be found on the SPA website: <http://www.spa.police.uk/assets/617667/iagtor>

2. Priority Setting and Data Gathering

The IAG identified three broad priority areas for which data relating to the use of the Coronavirus police powers was required. These were: police application of the powers; public acceptability of the powers and policing response; and public compliance with the powers. These three priority areas were mandated in broad terms under sections 1, 2, 4 and 5 of the IAG's ToR, as follows:

1. *To ensure that use of powers by Police Scotland is compliant - 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.*
2. *The powers which will be considered by the Group include the powers:*
 - (a) *relating to potentially infectious persons under section 51 of the Coronavirus Act 2020 and schedule 21 to the Act;*
 - (b) *to issue directions relating to events, gatherings and premises under section 52 of the Coronavirus Act 2020 and schedule 22 to the Act; and*
 - (c) *to enforce requirements to close premises and businesses and restrictions on movement and gatherings, all under Part 4 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.*
4. *To seek and take account of the views of police officers and members of the public in relation to the scope, clarity and use of the powers during the crisis period.*
5. *To pay particular attention to any use of powers involving children, young people, or persons within disadvantaged communities including those with protected characteristics under the Equality Act 2010, to ensure they are fully reflective of Police Scotland's duties.*

2.1 Data sources

The information contained in this report comes from 3 main sources:

- The Coronavirus Intervention (CVI) System established by Police Scotland to collect information on police activity in relation to the pandemic.
- Police incident, attendance and complaints data from Police Scotland's data systems.
- A citizen portal established by the SPA in order to canvas the views of the public.

Further information collected for the purpose of informing the IAG will be published separately:

- Two waves of a public opinion survey commissioned by the SPA.
- Interviews with Police Scotland officers and staff conducted by HMICS.
- Responses to Police Scotland's 'Your Police' and 'User Experience' Surveys.

2.2 Structure of the report

This report will focus on three main areas of the work of the IAG: (1) the police use of the temporary powers, how this was distributed by type of intervention and across different police Divisions, and how it changed over time; (2) public views about the police use of the powers; and (3) complaints from the public during the period of lockdown and how these were resolved.

3. Police Scotland's use of the temporary powers

3.1 Extent of use of interventions

In the 83 days from 27th March to 17th June 2020, a total of **53,112 interventions using the temporary policing powers were recorded** on the Police Scotland Coronavirus Intervention (CVI) system (an average of 640 per day).

Five main types of policing intervention to deal with individual non-compliance in relation to the Regulations are recorded on the CVI system:²

- Dispersal of a gathering after providing information
- Dispersal of a gathering after providing explicit instruction
- Forcible removal to a home address
- Issue of a Fixed Penalty Notice (FPN)
- Arrest

The vast majority (92.8%) of all interventions recorded on the CVI system involved dispersal, either after being informed of the public health risks by police officers (74.2%) or after being explicitly instructed to disperse (18.6%). Only 6.1% of all recorded interventions involved issue of a Fixed Penalty Notice (FPN) and 0.5% involved use of arrest powers. The remaining 0.6% of interventions involved forcible removal of a person to their home address.

During the first four weeks of lockdown, data from the CVI System showed that officers were using sanctions (i.e. FPNs or arrest) in around 22% of all recorded interventions; however, **as the lockdown continued police officers have increasingly relied on more informal measures**. This is consistent with Police Scotland messaging around use of the 3 E's (*engage, explain, encourage*) in the majority of cases, moving to the 4th E (*enforcement*) only when absolutely necessary. Change over time in the use of the powers is discussed in more detail in Section 3.3.

3.2 Geographical profile of interventions

3.2.1 Number of interventions

The number of **interventions recorded under the temporary policing powers was highest in the West Command Area** (66.4%), followed by the East (22.0%) and the North (11.6%). This balance has remained fairly stable over time.

Figure 1 shows that by far **the largest number of interventions occurred in Greater Glasgow (32.4% overall)**. This was followed by Argyll and West Dunbartonshire (14.0%) and Forth Valley (8.4%). The smallest share of interventions occurred in Dumfries and Galloway (1.8%), the North East (2.8%) and the Lothians and Scottish Borders (3.0%).

² A further two types of intervention were introduced under the Regulations: closure of premises during lockdown and detention of an individual suspected of having Coronavirus; however these were extremely small in number and are not reported here.

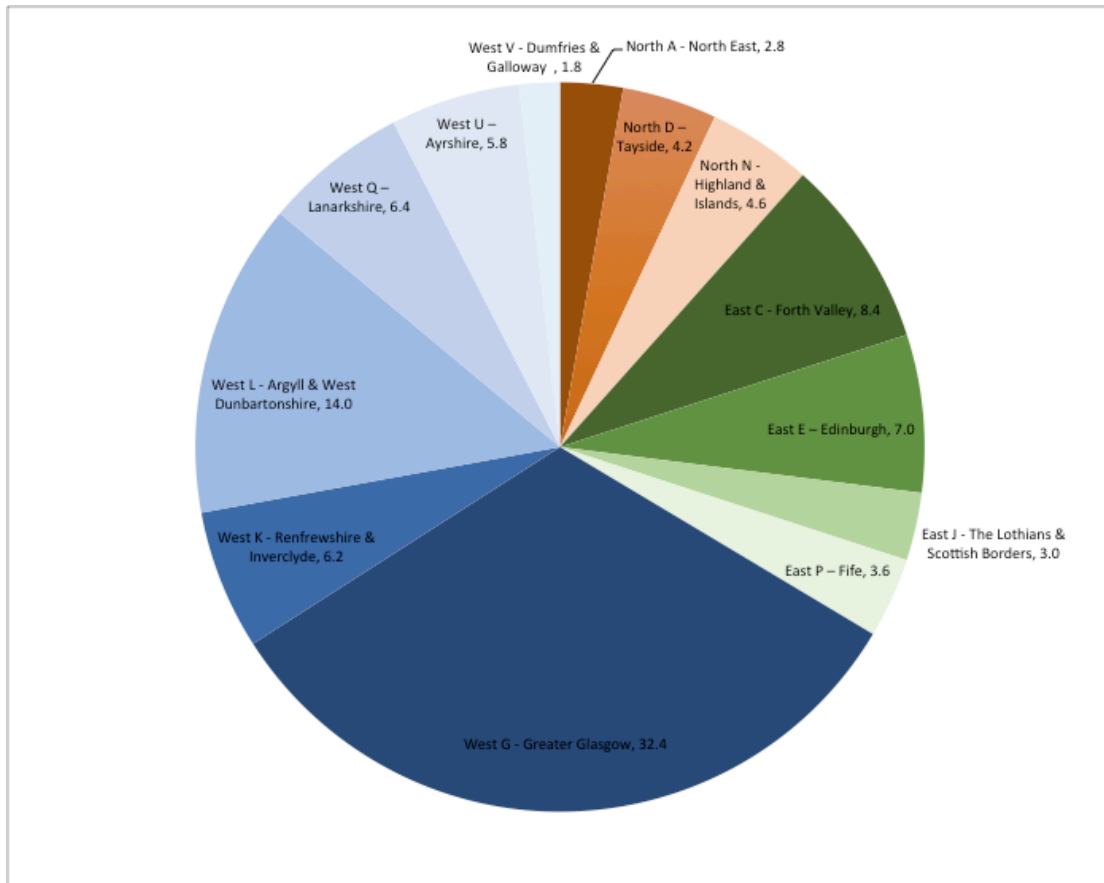


Figure 1: Distribution of the number of interventions using the temporary police powers by Division (27th March to 17th June 2020)

3.2.2 Rate of intervention across Command Areas

Comparing activity based on population rates allows a more comparable assessment of the proportionate use of each type of intervention in different parts of the country as it takes the population size into account. Rates per capita were calculated based on the population aged 16-59, based on the assumption that policing was most likely to focus on individuals within this age range (see Appendix 1).

The rate per capita of police use of the temporary powers was highest in the West (2,490 interventions per 100,000 people) compared to the East (1,171 per 100,000 people) and the North (830 per 100,000 people). **This suggests that, all else being equal, people living in the West of Scotland were more likely to be subject to the temporary policing powers than anywhere else in the country.**

Looking at the four main types of intervention under the temporary police powers, Figure 2 shows that the **rates per capita were higher in the West Command Area for all types**. The rate of dispersal after being informed varied substantially across the three Command Areas, but the rates of dispersal after instruction and issue of FPNs were similar in the North and East Command Areas.

There was little absolute difference in the rate of arrest across Command Areas, as the numbers were very small, but the overall pattern in terms of being highest in the West and lowest in the North remained.

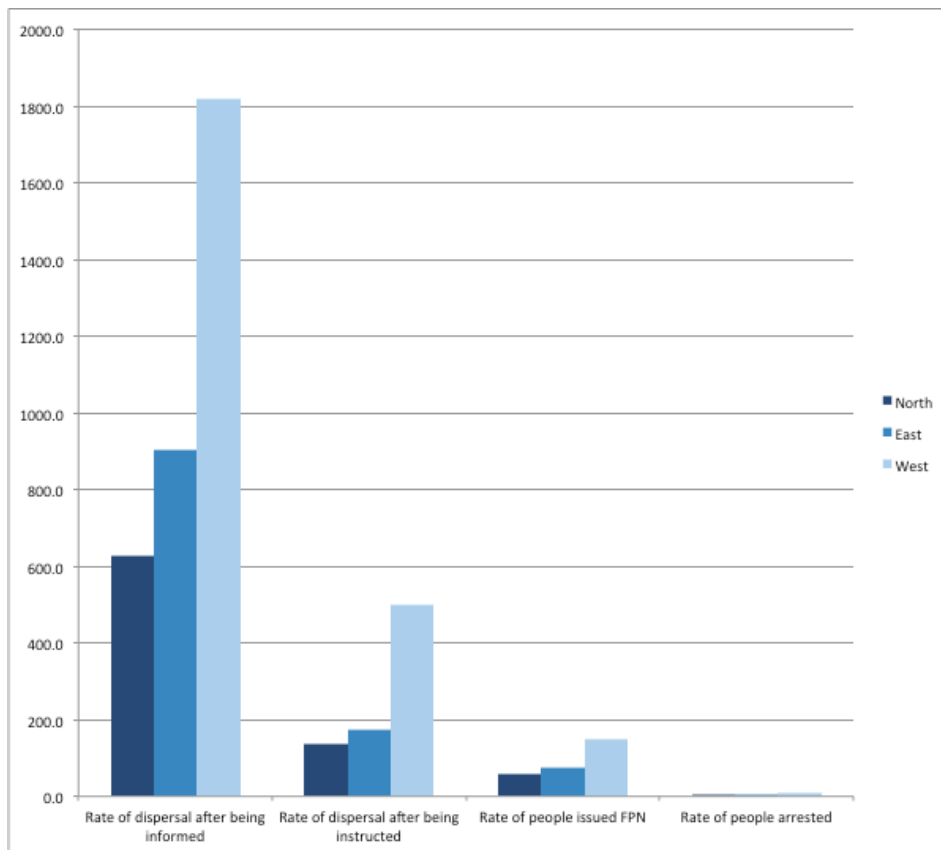


Figure 2: Rate of intervention per 100,000 people age 16-59 by type, by Command Area (27th March to 17th June 2020)

3.2.3 Rate of intervention across Divisions

Rates of intervention per capita were also calculated for the thirteen Scottish police Divisions. However, it should be noted that population rates may not entirely reliable as a means of providing geographic comparisons due to the influx of people to local beauty spots and tourist attractions that occurred during lockdown, especially in certain Divisions.

Figure 3 compares the total number of interventions (blue bars) and the rate of activity per 100,000 people aged 16-59 (red bars) across the Divisions. If the use of the powers was exactly the same across all Divisions and proportionate to population size, we would expect the blue bars to be different but the red bars to be similar.

Figure 3 is ordered in terms of the total number of interventions, and shows clear differences across the country not only in terms of numbers but also in terms of rates. It is important to note that **Divisions with higher rates of intervention do not necessarily indicate more police activity against, or less compliance amongst, those living in that area.** This is likely to be at least partially explained by people travelling from outwith the area to specific localities in order to take advantage of local amenities and beauty spots. It may also be partly explained by differences in available policing resource (i.e. police officer numbers per head of population).

Greater Glasgow not only had the highest number of interventions, but it also had a much higher rate of interventions compared to most other Divisions, with 4,189 per 100,000 people aged 16-59. That is far higher than the West Command Area average (2,490) and almost four times larger than the rate for Edinburgh (1,104), which is the next largest Division in terms of population size. Police officer numbers are higher per head of population in Greater Glasgow

than any other Division (62 per 10,000 people compared to an average of 40), so activity is likely to have been higher across the city. In addition, hot weather in April and May resulted in a large influx of visitors to Greater Glasgow’s parks, resulting in a strong proactive policing response.

Despite having around half the number of interventions compared to Greater Glasgow, **Argyll and West Dunbartonshire had the highest rate of interventions by far** (4,832 per 100,000 per capita). This rate is highly likely to have been inflated due to the influx of visitors to beauty spots and popular tourist destinations in this part of Scotland (including Loch Lomond), although it cannot be determined whether this level of enforcement was higher given tourist numbers in this area compared to other similar beauty spots in Scotland.

The rate of interventions was high in some Divisions containing large urban conurbations; however, this does not fully explain differences observed in Figure 3, as rates of intervention were so much lower in the City of Edinburgh, Tayside (containing Dundee) and the North East (containing Aberdeen) compared to Greater Glasgow.

Moreover, some Divisions with similarities in terms of remoteness and rurality had different rates of intervention, such as Dumfries and Galloway (1,123 per 100,000 people) compared to the Lothians and Scottish Borders (452 per 100,000 people).

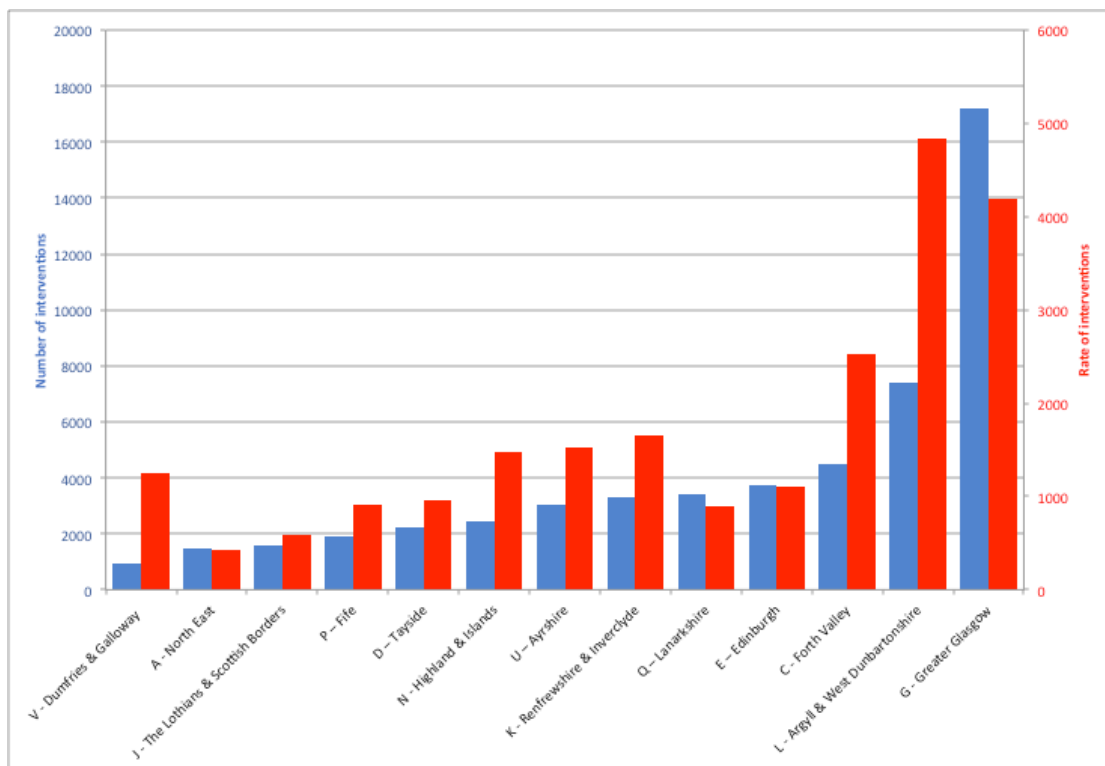


Figure 3: Rate of intervention per 100,000 people aged 16-59, by Division (27th March to 17th June 2020)

As noted earlier, it is possible that differences in police officer numbers may have driven some of the variation in police use of the temporary powers (i.e. a Division with a larger number of officers, per head of population, could be expected to have conducted more proactive policing during this period). Therefore, the rate of intervention per 1,000 police officers was calculated for each Division (see Appendix 1).

Figure 4 compares the rate of interventions per 100,000 people aged 16-69 (blue bars) with the rate per 1,000 police officers (red bars). The pattern of activity across Divisions shows little deviation whether the rate is based on police officer numbers or population size. There are, however, two exceptions: **Greater Glasgow had a lower rate of intervention, and Argyll and West Dunbartonshire a higher rate, based on police officer numbers.**

Looking at the red bars in Figure 4, the rate of activity based on police officer numbers in Greater Glasgow was almost identical to that in Forth Valley and only slightly higher than Renfrewshire and Inverclyde. In other words, **the much higher rate of policing activity per head of population in Greater Glasgow is explained to a large extent by the fact that there were proportionately more police officers working in the city** than there were in other Divisions.

Meanwhile, the rate of intervention based on police officer numbers was almost twice as high in Argyll and West Dunbartonshire as it was in Greater Glasgow or Forth Valley. This indicates that **officers based in Argyll and West Dunbartonshire were using the temporary powers to a much greater extent than anywhere else in the country.** This is almost certainly due to the high level of illegal travel to beauty spots such as Loch Lomond; however, it is notable that West Dunbartonshire had a much higher rate of Coronavirus-related deaths compared to most other council areas, which may also have impacted on policing activity.³

It is impossible to be accurate about the actual number of police officers available during the lockdown period (i.e. it may have differed due to higher than usual absence rates and due to reassignment of officers from desk-based duties to more operational tasks). It may also be the case that some officers typically working in Command Area or national roles were assigned to local Divisions to assist with policing the pandemic. **It is likely, however, given the very high profile policing response to the pandemic – especially in the early weeks - that police officer availability had some bearing on the rates of intervention in different parts of the country.**

³ Figures published by the National Records of Scotland on 24th June showed that the death rate from Coronavirus was 14 per 10,000 people in West Dunbartonshire, second only to Inverclyde with 15 per 10,000 people.

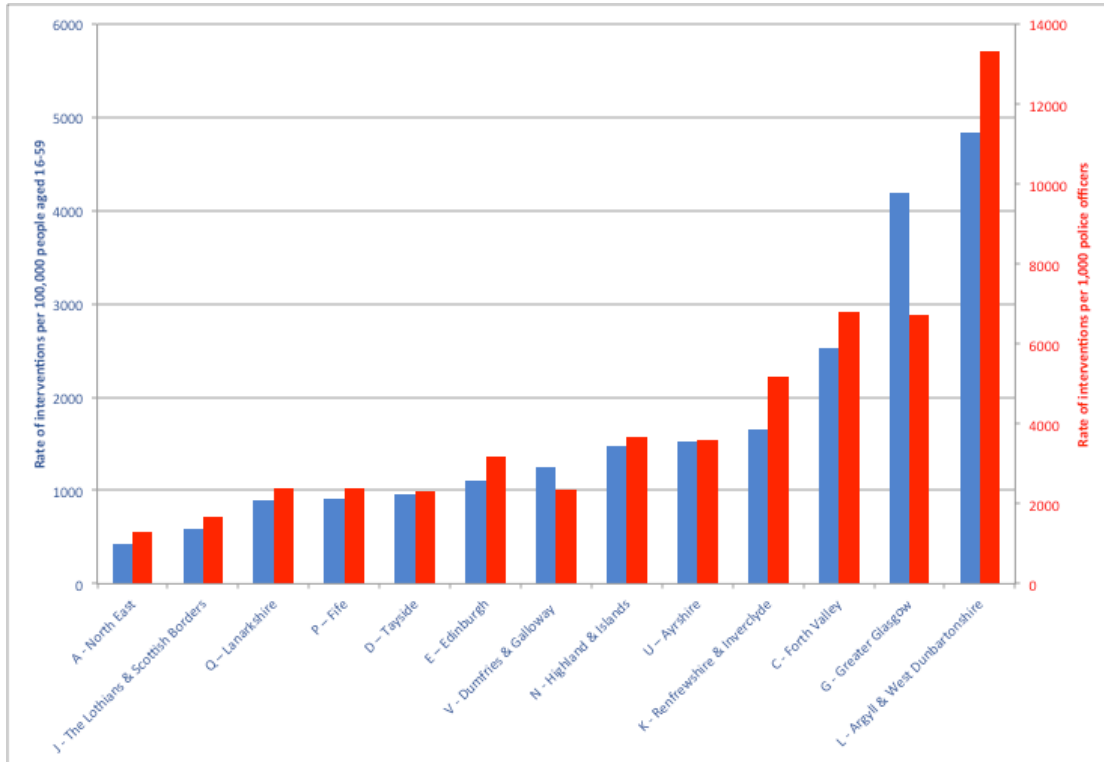


Figure 4: Comparison of rate of interventions based on population size and number of police officers, by Division (27th March to 17th June 2020)

3.2.4 Geographical profile of intervention type

Figure 5 provides a summary of the five types of intervention as a percentage of all activity within each Division. This provides a picture of the ‘relative’ use of different interventions across different parts of Scotland.

Although there are some differences, Figure 5 indicates that **there is a fairly consistent picture across Divisions in the relative use of the different intervention types**. Analysis (not presented here) suggests that this was not the case in the early days of the lockdown, but **over time the Divisions have become more consistent in their practice**. This is likely to be due to a combination of factors, including close supervisory oversight of police officers’ use of the powers, sharing of organisational learning across Divisions and consistency of messaging from Police Scotland around the use of the 4 E’s.

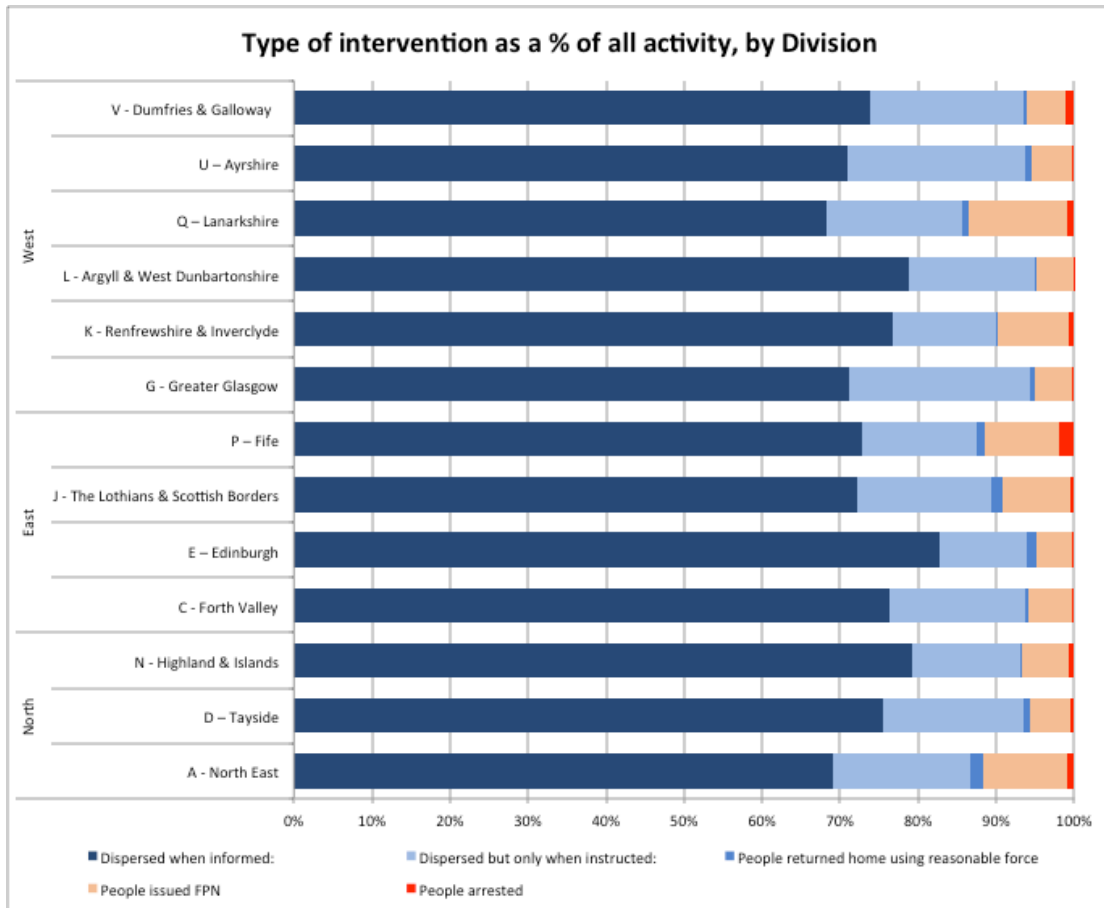


Figure 5: Summary of types of intervention as a percentage of all interventions, by Division (27th March to 17th June 2020)

Consistent with the Police Scotland messaging around use of the first 3 E's, **dispersals were by far the most common type of intervention used by officers across all Scottish Divisions**. This ranged from 85.7% in Lanarkshire to 94.9% in Argyll and West Dunbartonshire. So, even though Argyll and West Dunbartonshire had a very high rate of intervention, the bulk of it was clearly focused on low level policing.

There are some differences in how the interventions have been applied across the country. For example, **police officers in the City of Edinburgh were the most frequent users of informal dispersal** (based on informing people about the public health implications), representing 82.8% of all activity. Whereas, officers in Lanarkshire and the North East used this type of intervention least frequently overall (just less than 70% of all activity).

At the enforcement end of the spectrum, **FPNs made up a greater proportion of all interventions in Lanarkshire (12.6% of all activity) compared to any other Division**; whereas, they made up only around 5% or less of activity in Edinburgh, Tayside, Greater Glasgow, Ayrshire, and Dumfries and Galloway. The high rate of enforcement in Lanarkshire is most likely related to a series of large gatherings and parties that occurred in and around Coatbridge in the early weeks of lockdown during a period of extremely hot weather.

Only 252 arrests using the temporary powers occurred over this period, so the percentage of interventions involving arrest was very small (only 0.5% overall). Relatively speaking, use of arrest was highest in Fife (1.9% of all activity), but this represented only 35 arrests in total.

Despite having the highest rate of interventions overall, use of arrest was lowest in Argyll and West Dunbartonshire (0.1% of all activity), representing only 20 arrests in total.

These figures suggest that the police powers have been used differently across the country; however, this does not mean they have been used disproportionately. These patterns of activity could have been driven by different underlying demand or behaviours in different parts of the country. **The overall picture is one of broad consistency in practice across Divisions.**

3.2.5 Geographical pattern of dispersals

During the first four weeks of the lockdown, dispersals represented 76.6% of all interventions; however, by 17th June this had risen to 92.8%. It is clear that **as the lockdown has gone on, use of the first 3 E's has increasingly taken priority.**

Four out of five dispersals involved officers providing information only, while one in five occurred after an explicit instruction had been given. This suggests that **in the vast majority of instances officers were able to rely on the first 2 E's, engagement and explanation.**

Two thirds of all dispersals (66.7%) occurred in the West Command Area, 21.8% in the East and 11.5% in the North. This balance remained stable over time. Nevertheless, **the use of dispersal as a proportion of all activity was practically identical across Command Areas:** 93.2% in the West, 92.2% in the East and 91.7% in the North. This became more consistent over time (in the early weeks the use of dispersal was higher in the West than the North and East).

Looking in more detail at the profile of dispersals, Figure 6 shows that **dispersal after an explicit instruction represented a minority of all dispersals in most Divisions** (typically less than 20%). Edinburgh stands out as being the Division with the lowest reliance on dispersals requiring an explicit instruction (12% of all dispersals). By contrast, the equivalent figure for Ayrshire and Greater Glasgow was around double that for Edinburgh.

These data suggest that **officers in some Divisions may have felt more need to issue explicit instructions to disperse, as opposed to simply providing information, than others** (although this could also be due to some degree of variation across Divisions in how officers defined 'informing' and 'instructing' when recording interventions).

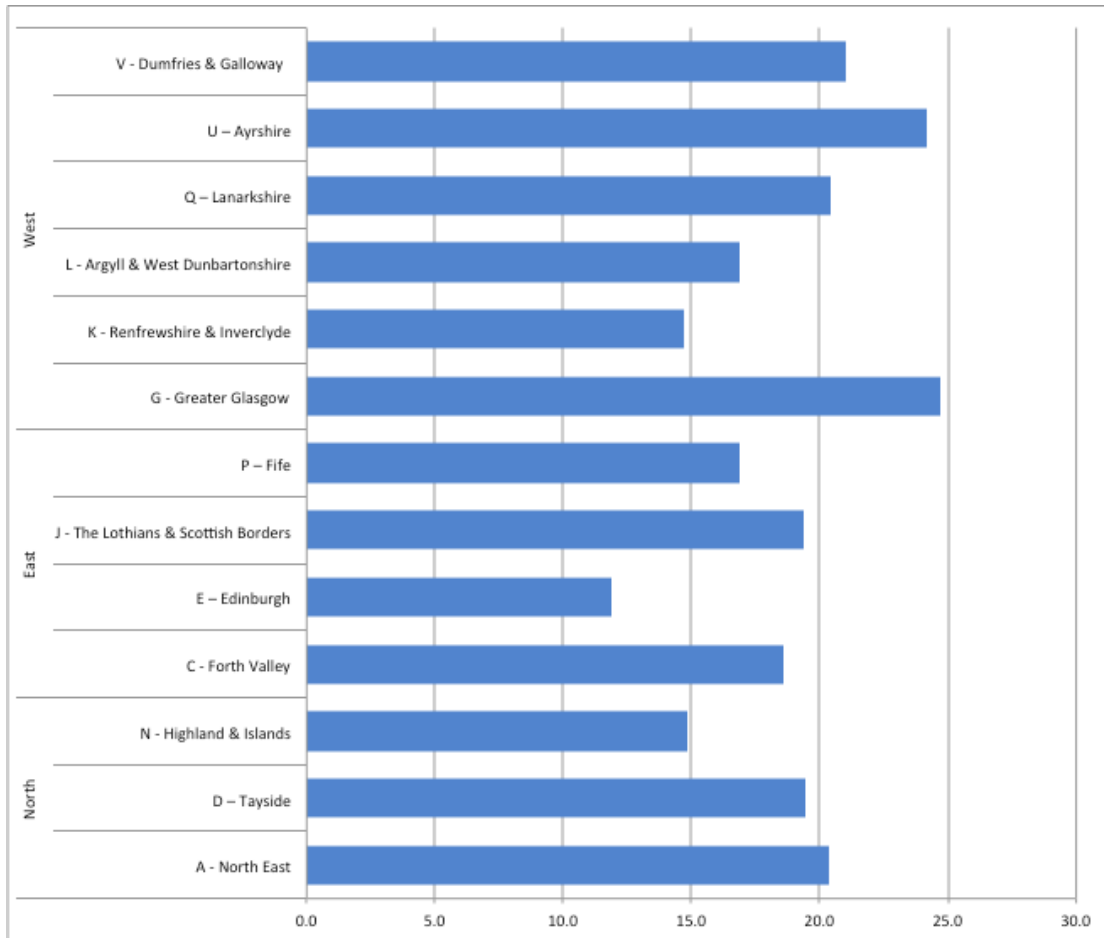


Figure 6: Dispersal after instruction as a percentage of all dispersals, by Division (27th March to 17th June 2020)

3.2.6 Geographical pattern of enforcement

Enforcement represented only 6.6% of all interventions during the period to 17th June. This is a marked reduction on the equivalent figure of 21.9% during the first four weeks of lockdown. Most enforcement involved issue of FPNs (6.1% of all activity) with the use of arrest being rare (0.5% all activity).

The majority of FPNs or arrests occurred in the West Command Area (63.7%), with 23.0% in the East and 13.3% in the North. This balance remained stable over time. The use of enforcement as a percentage of all interventions across Command Areas was broadly similar for the North (7.6%), East (6.9%) and West (6.3%). This balance has become more consistent over time.

There was some variation between Divisions in the proportion of all interventions that involved use of enforcement. FPNs or arrests made up only around 5% of all activity in Edinburgh, Greater Glasgow, Argyll and West Dunbartonshire and Ayrshire, but they made up 13.6% in Lanarkshire, 11.8% in the North East, and 11.4% in Fife Division. Lanarkshire has consistently had the highest proportion of interventions involving enforcement across all Divisions since the start of the lockdown, although the gap has closed substantially over time.

Only a small proportion of all enforcements involved the use of arrest (7.2% on average). Figure 7 shows that this varied considerably across Divisions, with only 2.3% of all enforcement in Argyll and West Dunbartonshire involving arrest compared to 16.3% in Fife and 16.9% in Dumfries & Galloway.

It is important to view these figures in context, as the number of arrests was very small (only 252 in total, including 9 in Dumfries and Galloway). Nevertheless, these figures suggest that **officers in some parts of Scotland may have felt the need to use stronger enforcement proportionately more often than those elsewhere.**

More would need to be known about the context of these encounters, and the profile of those who were subject to different forms of enforcement, to determine whether there were any substantive differences in policing practice across Divisions.

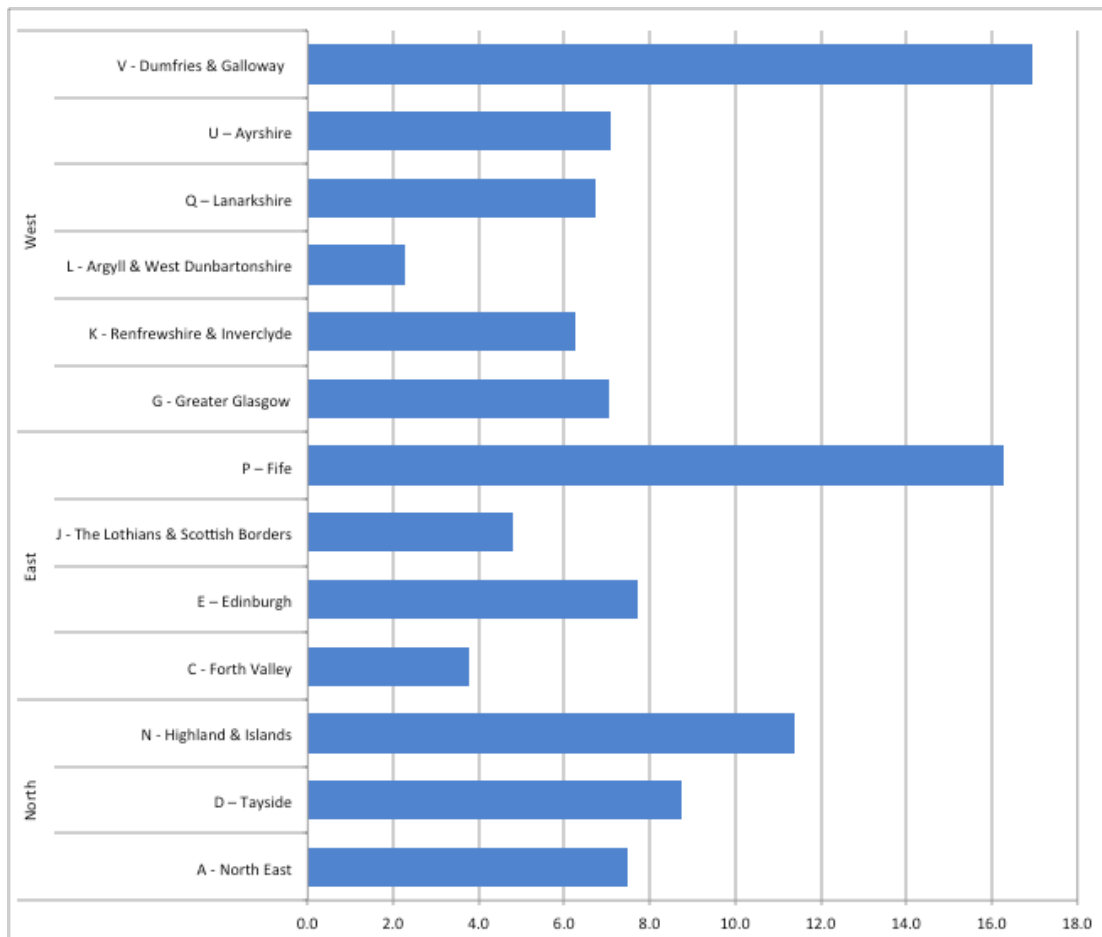


Figure 7: Arrests as a percentage of all enforcement, by Division (27th March to 17th June 2020)

3.2.7 Geographical pattern of forcible removal

There were only 320 occasions when police officers exercised their powers to forcibly remove someone to their home address. These cases represented 0.6% of all activity.

The total number of forcible removals was highest in the West (170), followed by the East (105) and then lowest in the North (45). Greater Glasgow had the highest number of forcible removals (82) followed by Edinburgh (44).

As a percentage of all activity, forcible removals were highest in the North East (1.6% of all activity) and the Lothians and Scottish Borders (1.4%). However, this represents a relatively small number of actual cases (23 in each Division). These are not discussed further in this report.

3.2.8 Geographical differences in rate of intervention

Figure 8 compares the rates of intervention (per 100,000 people aged 16-59) for the four main types of policing power. It shows that **rates of dispersal after being informed and rates of dispersal on instruction were consistently highest in Greater Glasgow and Argyll & West Dunbartonshire**, with rates being much lower elsewhere. Indeed there is a very similar pattern in terms of population rates in both of the top two graphs.

Rates of FPN show a similar pattern in some respects to the top two graphs. Greater Glasgow and Argyll and West Dunbartonshire continue to have the highest rates overall; however, they are less dominant. Both Renfrewshire and Inverclyde, and Forth Valley, have rates of FPN that are approaching those of Greater Glasgow, and rates in Lanarkshire and Fife appear to be higher than other Divisions, when compared to rates of dispersal.

Rates of arrest (which were much smaller in number and so may be subject to more fluctuation) show a different picture again. There were uncharacteristically high rates of arrest in Fife, Dumfries and Galloway, and the Highlands and Islands compared to other Divisions. Meanwhile, the rate of arrest in Argyll and West Dunbartonshire was much smaller than elsewhere and suggests that, while there was a lot of Coronavirus-related policing activity in this Division, very little of it required the use of enforcement.

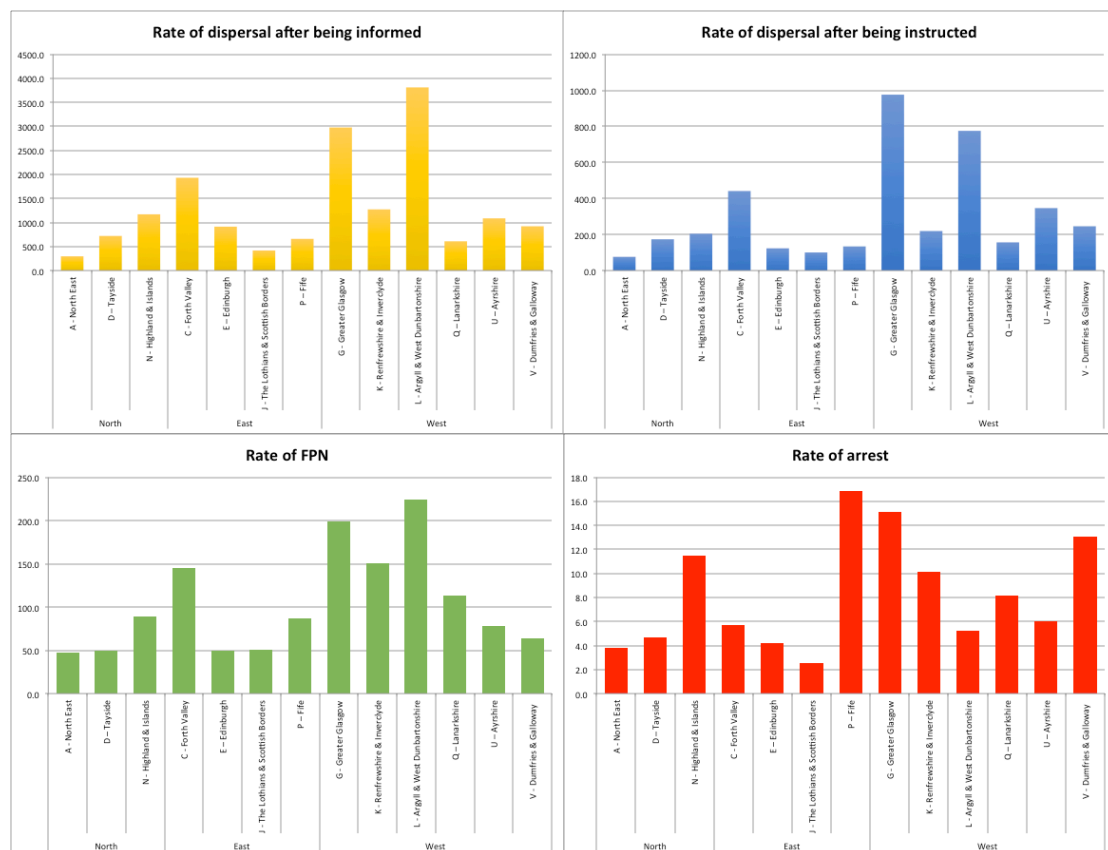


Figure 8: Rate of intervention by type per 100,000 people age 16-59, by Division (27th March to 17th June 2020)

With the exception of Greater Glasgow, **those Divisions with the highest rates of arrest were typically those where the total number of interventions was small**. Interviews with police officers conducted by HMICS did pick up some differences in practice across the Divisions. Therefore, such differences could be at least partly explained by lack of experience amongst officers in using the temporary policing powers in areas where they were used less frequently,

or they could be a function of differences in the types of incidents encountered. Without further information on the circumstances in which the arrests occurred, or comparing the characteristics of those who were subject to arrest, it is not possible to tell.

3.3 Change in use of interventions over time

Figure 9 shows the daily count of interventions recorded on the CVI System from 27th March to 24th June. It is hard to determine an exact pattern because there is so much variation on a daily basis, with large peaks in activity at irregular intervals. Generally speaking, it shows that **there was a steady increase in police use of the temporary powers during April, followed by generally decreasing pattern punctuated by large spikes in activity during May and June.**

The small number of interventions recorded in late March/early April are likely to be due to a combination of factors during the early days of lockdown, including: Police Scotland guidance and training taking time to filter through to officers; officers taking time to get used to the new rules and guidelines; higher than normal levels of staff absence; high levels of compliance from the public; and time taken for officers to get used to, and start using, the new recording system. While there was some evidence of non-recording of policing activity at the start of lockdown, a recent comparison between the number of FPNs recorded on the CVI System and those on the court ticketing system found that **the CVI System has provided an accurate record of activity over time.**

While it is difficult to accurately establish cause and effect, **the characteristic spikes in activity typically coincide with three main factors: weekends and holidays; hot and sunny weather; and public communications around changes to the lockdown.** There were two particularly large spikes in early May (6th and 9th), which reflect heavy policing presence at beaches, parks and beauty spots during several days of extremely hot weather. However, these spikes also occurred during a period in which the UK Government messaging around the Coronavirus rules was starting to change (i.e. Boris Johnson announced his plans to publish a roadmap to ease the restrictions on 2nd May before making his formal public announcement on 10th May) which may have impacted on individual compliance levels.

There is a clear downward trend in intervention from around the 11th May, the date that Nicola Sturgeon relaxed the restrictions on going out to exercise once a day. This period also coincides with an increase in the opening of retail outlets and a noticeable rise in people starting to move around in public, making active policing of the lockdown much more difficult. There are two further large spikes, one on the 21st May, which coincides with the Scottish Government's publication of the Covid-19 route-map, and the other on the 25th of May, which coincides with the Scottish Spring Bank Holiday and more sunny weather.

The final large spikes in activity occurred on the 1st and 6th of June, following the start of the Phase 1 changes to the lockdown in Scotland (which began on 29th May). However, **police use of the temporary powers during Phase 1 has been substantially lower than at any other period of lockdown.** Indeed, by 24th of June there were virtually no interventions recorded.

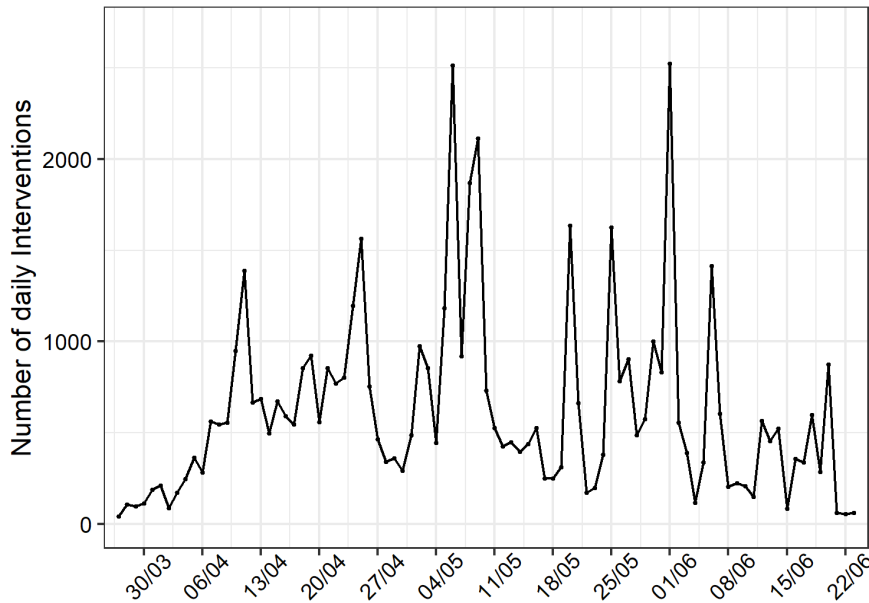


Figure 9: Daily number of intervention across Scotland (27th March to 24th June)

Looking at the number of interventions by type (this time weekly rather than daily), Figure 10 shows the predominant use of dispersals following information. This shows **there was a steady increasing trend during the first four weeks after the introduction of the new police powers followed by a gradual decline punctuated by some characteristic spikes in activity**. Dispersals following a specific instruction generally follow the same trend, with large spikes in weeks 19 (mid May) and 22 (early June), although the ‘peak’ for this type of intervention was later than that for information-based dispersals. It is much harder to discern a trend for the other three types of intervention, as the numbers are so small; however, they do not show large spikes in activity at the same time as those for dispersals. Indeed the largest number of FPNs was recorded in week 15 (mid April). This indicates that, **while there were large spikes in policing at various points during lockdown, this primarily involved very low-level intervention**.

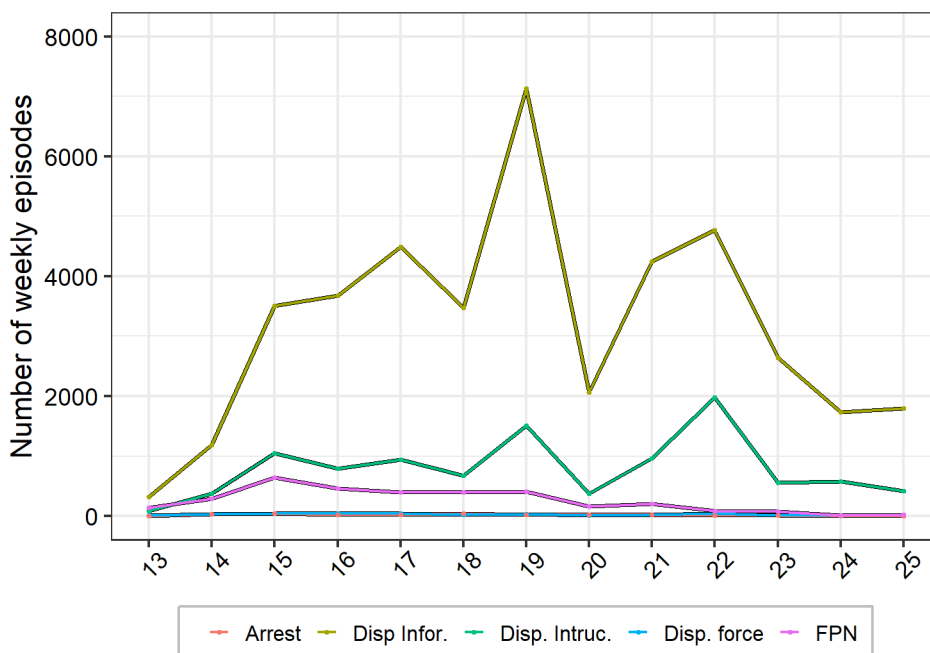


Figure 10: Weekly number of intervention by type (27th March to 24th June)

Figure 11 illustrates the changing use of the different intervention types over time. This helps us to see the *relative use* of each type of intervention, which is different to the absolute number. For each week, it shows the proportion of all activity that was represented by each type of intervention. The most obvious trend is the gradually increasing proportion of all interventions that involved dispersal (especially dispersals after being informed). It is also evident that **the use of FPNs as a proportion of all interventions was highest during the first week of the powers coming into use, and then gradually diminished in use over time.** It is harder from this chart to see any trend in the use of arrests or of forcible removals to a home address; however, those also diminished as a proportion of all interventions over time.

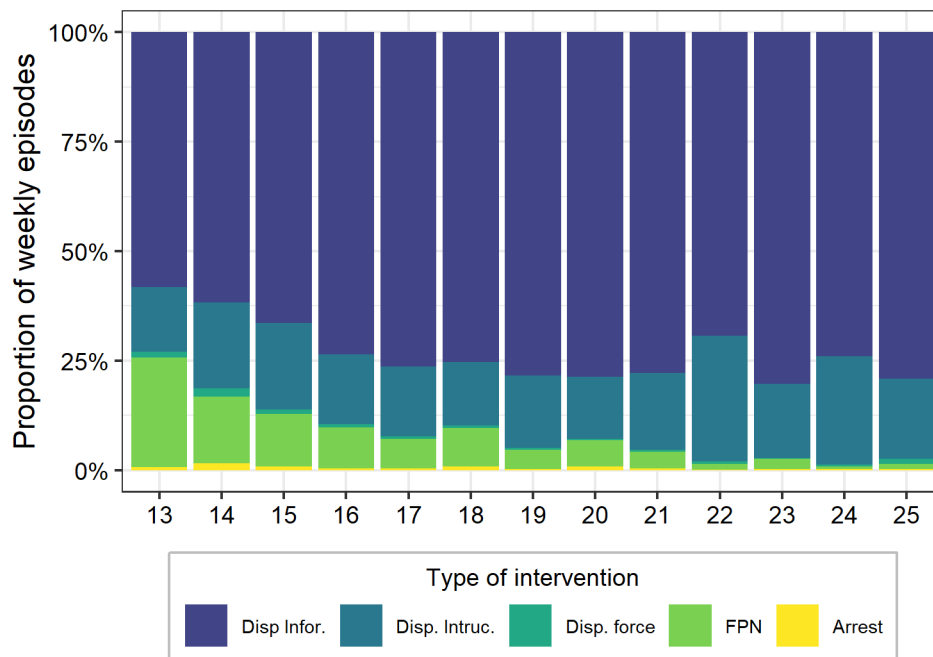


Figure 11: Weekly proportion of all intervention by type (27th March to 24th June)

The number and pattern of interventions recorded across the thirteen police Divisions varied widely. Figure 12 shows the number of interventions recorded on a weekly basis by Division. While **there is no single temporal pattern in the use of the police powers across Divisions,** some trends can be identified although they do not cluster in terms of the three Command Areas.

Four Divisions (North East, Tayside, Lanarkshire and the Lothians and Scottish Borders) had a peak in activity early on in lockdown (around weeks 15-16) followed by a gradually diminishing number of interventions. The North East had a steady decline in numbers, whereas Tayside, Lanarkshire and the Lothians and Scottish Borders had a more erratic decline in numbers with smaller spikes later in lockdown (albeit at different times for each Division).

Three Divisions (Greater Glasgow, Forth Valley and Renfrewshire and Inverclyde) had a gradually rising trend in the number of interventions, peaking at week 19, and then a gradually diminishing number (with one or two smaller peaks in activity around weeks 21-23).

Two Divisions (Highlands and Islands and Ayrshire) had a strong peak in activity near the start of lockdown (week 15) followed by a decline in numbers before then starting to increase again towards the end of the period (possibly reflecting an increase in tourists heading to these areas).

While four Divisions (Edinburgh, Fife, Argyll and West Dunbartonshire, and Dumfries and Galloway) showed peaks and troughs in activity across the whole period with no clear trend.

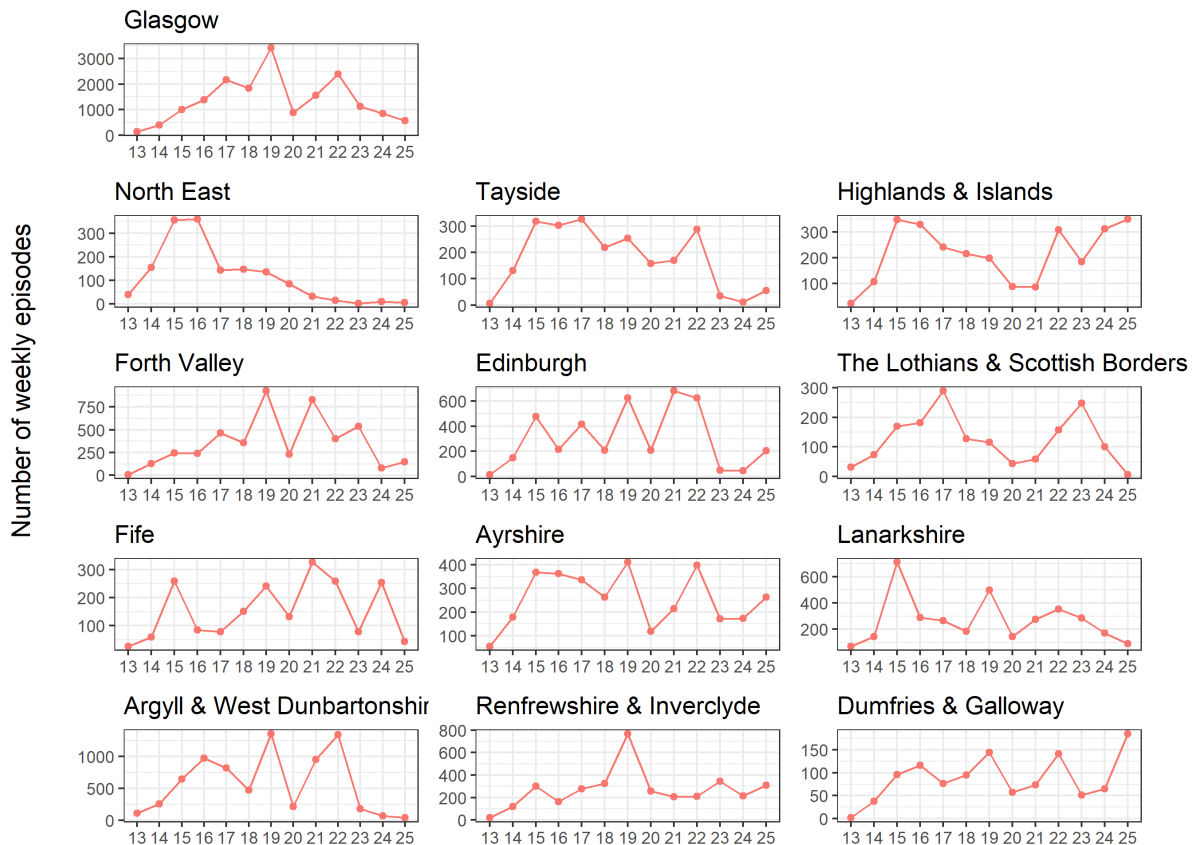


Figure 12: Weekly number of interventions by Police Division (27th March to 24th June)

3.4 Context of intervention use

3.4.1 Locus of encounter

The CVI System also recorded where each intervention took place, in terms of whether it occurred in a public or private place. Overall, **82.8% of all interventions occurred in a public place (e.g. a street, park, beach or beauty spot) and the remaining 17.8% in a private place (e.g. a residential dwelling or other building)**. Looking at the distribution of interventions according to where they happened, dispersal following information was the most common outcome during encounters that occurred in both private (60.6%) and public places (77.3%). However, interventions that occurred in private places were far more likely to result in an FPN being issued (13.5%) or an arrest (1.3%) compared to those in public spaces (4.3% and 0.3%, respectively).

Analysing these data slightly differently, Figure 13 shows the percentage of all incidents that occurred in a public or private place by type of intervention. Interestingly, half of all arrests, 40% of all FPNs and 37% of incidents where a person was forcibly taken home occurred in a private place, whereas this was the case a much smaller proportion of dispersals. **This indicates a much greater use of sanctions when policing breaches of the lockdown in places such as people’s homes (e.g. house parties) compared to breaches in public spaces.**

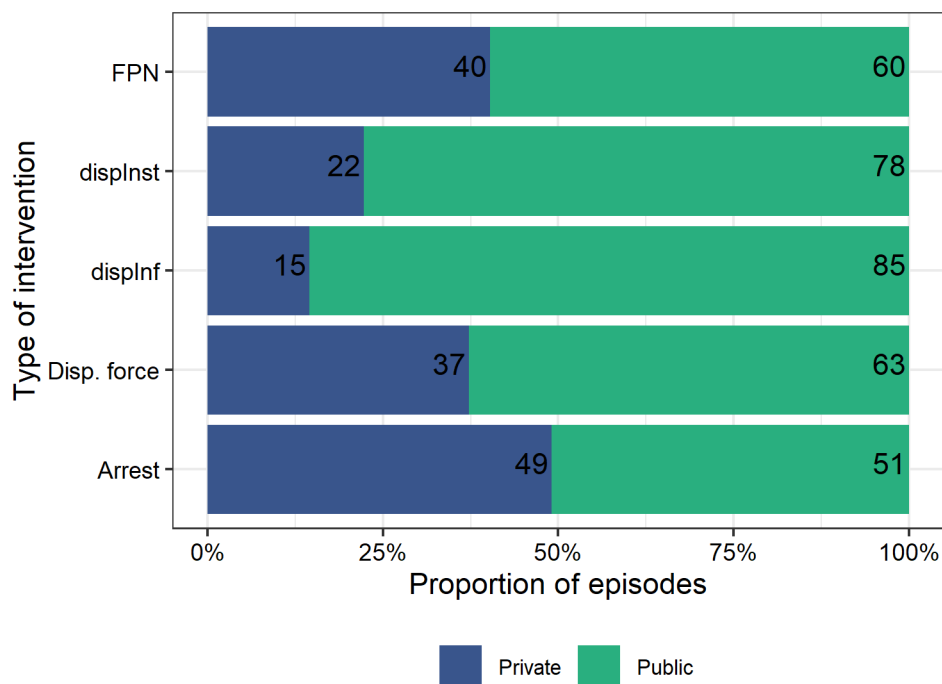


Figure 13: Proportion of each type of intervention occurring in private or public place (27th March to 24th June)

3.4.2 Size of gatherings

The CVI System also recorded how many people were involved in each encounter that involved use of the temporary police powers. When the lockdown was introduced on 23rd March gatherings of three or more people were banned. However, **half (50.2%) of all encounters recorded by Police Scotland involved only one or two people**; a third (30.8%) involved 3 to 5 people and around a tenth (11.5%) involved between 6 and 10 people. Only 6.7% of incidents involved between 11 and 50 people, and 0.7% involved more than 50 people.

Of course, this also varied by intervention type. Figure 14 shows that **dispersals were most likely to involve larger gatherings of people, while incidents involving an arrest or a FPN were most likely to involve a small number of individuals**. There were very few incidents involving enforcement that involved very large gatherings. Nevertheless, this also varied geographically. Looking at the use of enforcement only, Figure 15 shows that arrests and FPNs were more likely to be used in incidents involving very large gatherings of people in Greater Glasgow and the Lothians and Scottish Borders, but also moderately sized gatherings in Forth Valley, Edinburgh, Ayrshire and Fife. Whereas, enforcement was predominantly used in incidents involving very small numbers of people in Dumfries and Galloway, Tayside, Highlands and Islands, and Argyll and West Dunbartonshire. Of course, these trends are likely to reflect the underlying context and circumstances of encounters as well as any possible differences in policing practice.

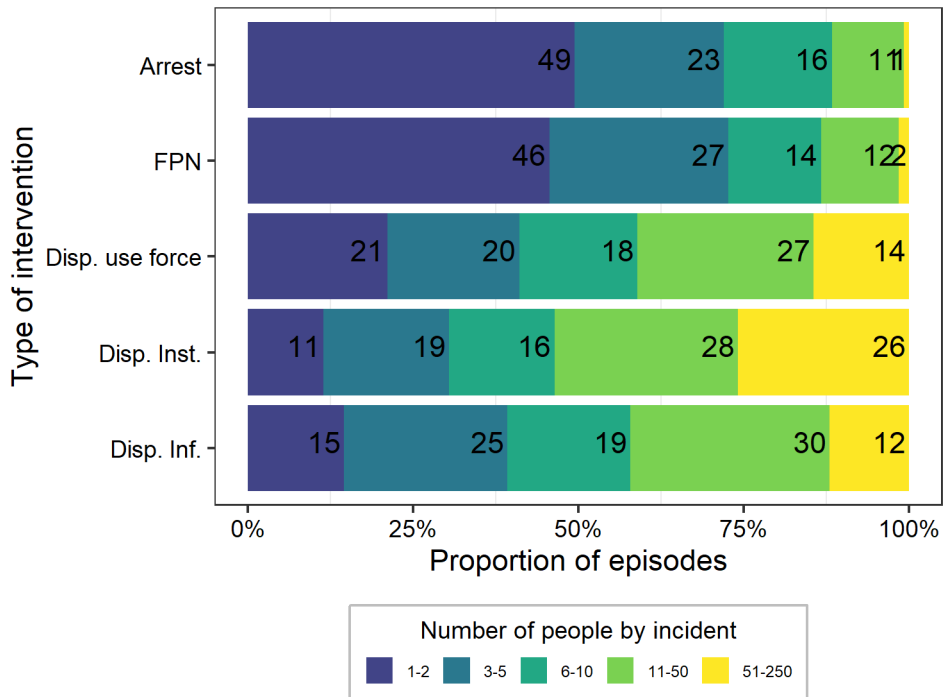


Figure 14: Proportion of each type of intervention by number of people involved in the incident (27th March to 24th June)

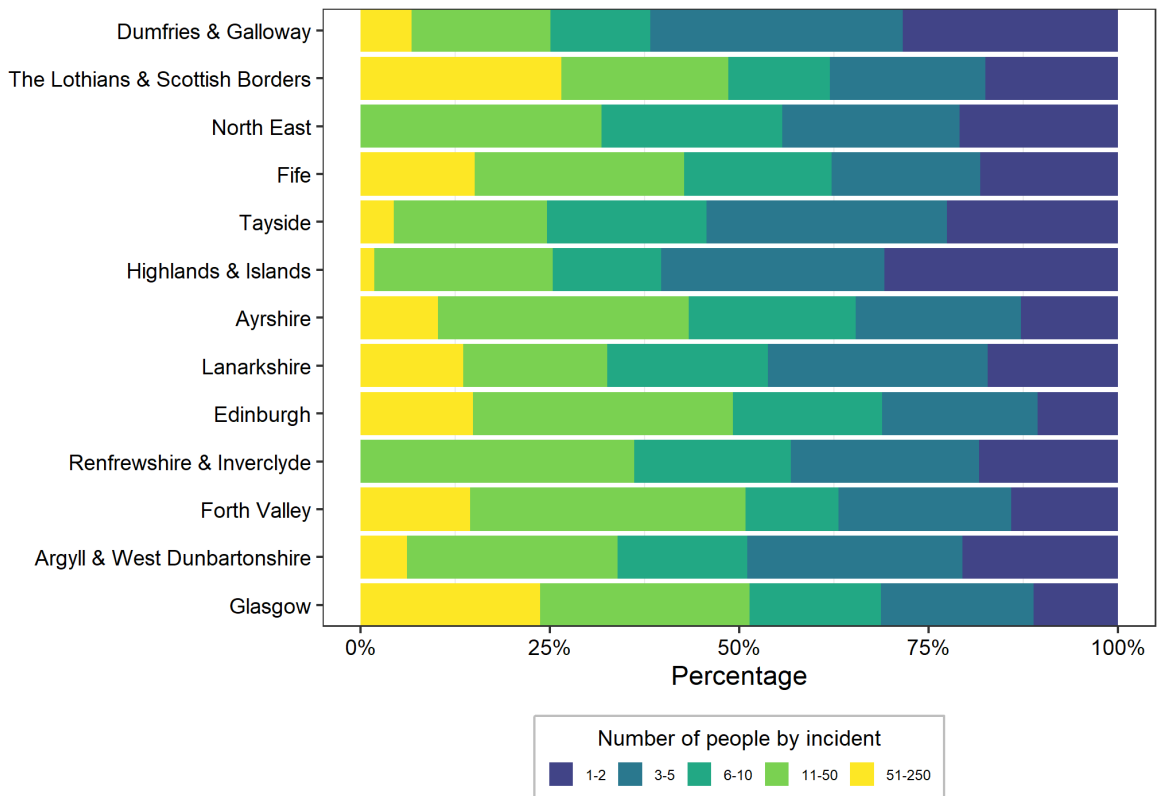


Figure 15: Proportion of enforcement interventions by number of people involved in the incident, by Division (27th March to 24th June)

3.5 Comparison with other countries

It is difficult to provide an accurate comparison of policing activity during the lockdown in Scotland with similar activity in other parts of the UK, as there is little comparable data. As demonstrated in earlier sections of this report, the Police Scotland's Coronavirus Intervention (CVI) system has proved to be an extremely useful tool for evaluating the policing response to the pandemic and how this has changed over time. However, no equivalent system was established in other parts of the UK.

The only aspect of the temporary policing powers that can be compared is the published number of FPNs issued. Comparable data for Scotland, England and Wales are publically available from 27th March to 8th June; however, data for Northern Ireland is only available from 1st April to 4th May, and so cannot be used as a robust comparator.

Table 1 shows the total and average daily number of Fixed Penalty Notices (FPNs) issued in response to the Coronavirus pandemic in each country. This is converted into an average daily rate per 10 million people, to take account of the different population size. It shows that **there is considerable variation between countries, with Wales having the highest overall rate of FPNs per capita and England having the lowest**. Notably, the rate per capita of FPNs in Scotland is 2.1 times higher than that for England; while the rate in Wales is 2.6 times higher.

Table 1: Total number of Fixed Penalty Notices issued under the temporary policing powers (27th March to 8th June)

Country	Total number of FPNs issued	Average per day	Population size	Average daily rate per 10m people
Wales	2,282	30.84	3,138,631	98.3
Scotland	3,240	43.78	5,438,100	80.5
England	15,715	212.36	55,977,178	37.9

Caution is required in interpreting these cross-country comparisons. Overall, the number of FPNs issued in each country is small in absolute terms and the population sizes are large, which makes comparing rates problematic. For example, if the total number of FPNs in Scotland had been increased by just over 700 (or 22%) - which would equate to around 10 additional FPNs per day - it would reach the same average daily rate as Wales. Likewise, if the number of FPNs in England were increased by around 25,000 (or 160%) – equating to around 340 per day nationally, or an additional 8-9 FPNs per day per police force - it would have the same effect. Thus, relatively small changes in daily numbers either way could have significantly influenced these rates. In addition, it is clear that there has been varying practice in terms of how police forces have responded to the pandemic across the UK; therefore, **no strong conclusions can be drawn from these figures**.

3.6 Impact of pandemic on wider policing context in Scotland

In considering the police use of the temporary powers **it is important to take account of wider impacts on policing demand and response during lockdown**. This section of the report presents data on the number of incidents recorded on the Police Scotland STORM system, by

type of incident.⁴ It also presents information on the number and proportion of those incidents to which resource was allocated. Resource allocation may have included attendance of police personnel or it may have involved the incident being dealt with in some other way, such as by telephone, email or some other form of non-physical contact.

The period covered for this analysis was 1st January to 25th May 2020. This allows comparison of the number of incidents, and the proportion of those incidents involving resource allocation, in the weeks prior to lockdown (which started 23rd March) with those recorded in the two months following lockdown. Data for the same period in 2019 were also analysed, to see whether there any differences between the two periods in 2020 might be explained by an underlying seasonal trend. It should be noted that the number of incidents recorded is not a universal measure of demand for policing, as it does not include all calls to the police or measure all demand generated through street-based operational policing; however, it does provide a consistent measure of underlying activity requiring police involvement.

The data on resource allocation reflects a range of types of police intervention. It is worth noting that there may have been differences in the nature of the resource allocation during the lockdown period. Since early 2019, Police Scotland has been working towards implementing a Contact Assessment Model (CAM) for dealing with calls to 101 and 999 in an effort to improve its response to public demand for service. This involves taking a risk-based approach to determining whether a physical police presence is required at incidents. At the start of lockdown, Police Scotland escalated the CAM approach in order to ensure that it could deal with any increase in demand from the public as a result of the pandemic. It is likely, therefore, that more resource allocation than usual involved non-attendance of an officer. However, data on the nature of the police response is not included in this report.

3.6.1 Change over time in police incidents recorded

The number of incidents recorded daily by Police Scotland between January and May is shown in Figure 16. **The number of incidents recorded in 2020 (denoted by the blue line) was slightly lower across the whole period compared to 2019 (denoted by the grey line), but this is especially true in the four weeks immediately before and after the lockdown.** Figure 16 shows a substantial reduction in the total number of incidents recorded in the month prior to the lockdown; however, this started to increase again immediately following lockdown. The number of incidents recorded then increased throughout April, before there was another, smaller, decline in May.

These data indicate that the Coronavirus pandemic did have an impact on policing in terms of a reduction in demand; however, this began in the very earliest phase of the pandemic (well before lockdown) and, while there was some resurgence after lockdown, the level of police demand did not quite reach the levels that might have been expected during this period when compared with the previous year. In other words, **the general level of demand on Police Scotland was lower during the lockdown than it would normally have been, offering it greater than usual capacity to deal with the public policing requirements of the pandemic.**

⁴ Incidents recorded by Police Scotland include a wide range of occurrences, not all of which are crime-related. This includes missing persons, disturbances, road traffic accidents and sudden deaths.

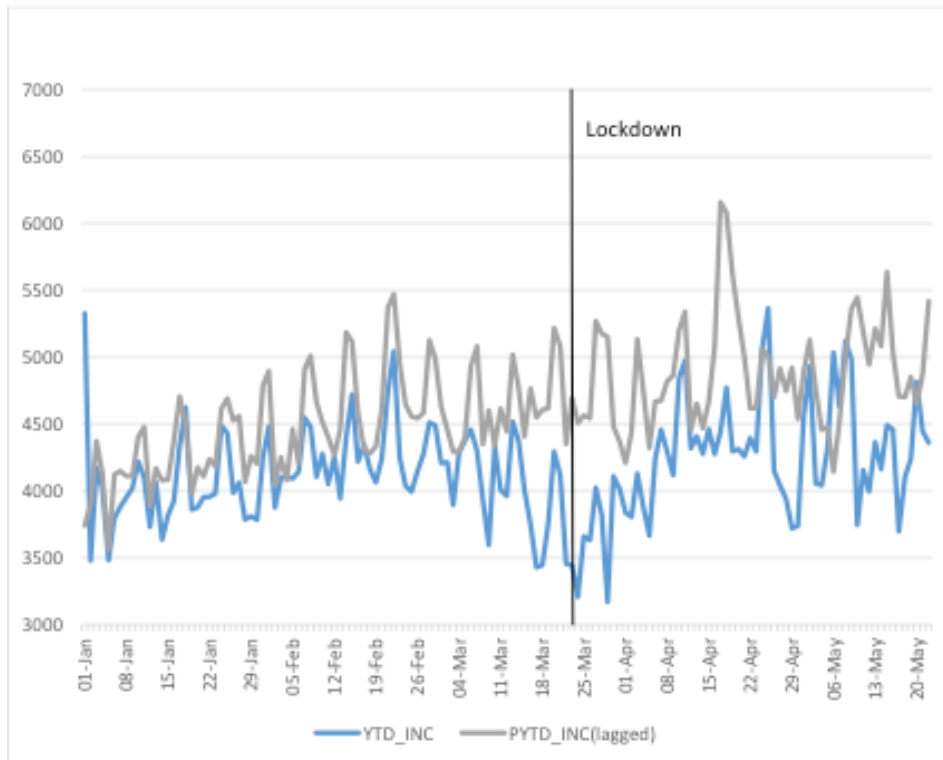


Figure 16: Total number of incidents recorded per day by Police Scotland (1st January to 25th May 2020 YTD and 2019 PYTD)

3.6.2 Change over time in police resource allocation

Figure 17 shows the percentage of all incidents recorded by the police that involved resource allocation. This remained relatively stable at around 60% both before and after lockdown, so **there was no discernable effect of the pandemic on the likelihood of Police Scotland responding to incidents that were recorded during this time.** The level of resource allocation was slightly lower in 2020 than 2019 in the pre-lockdown period; however, with the exception of a brief dip in the week immediately following lockdown, there was no difference at all in the level of resource allocation following lockdown compared to the same period of the preceding year.

As noted earlier, the increased use of the CAM approach during lockdown may have resulted in changes to the actual nature of the resource allocation (e.g. in terms of whether a police officer was deployed in person or not); however, these data were not available for this report.

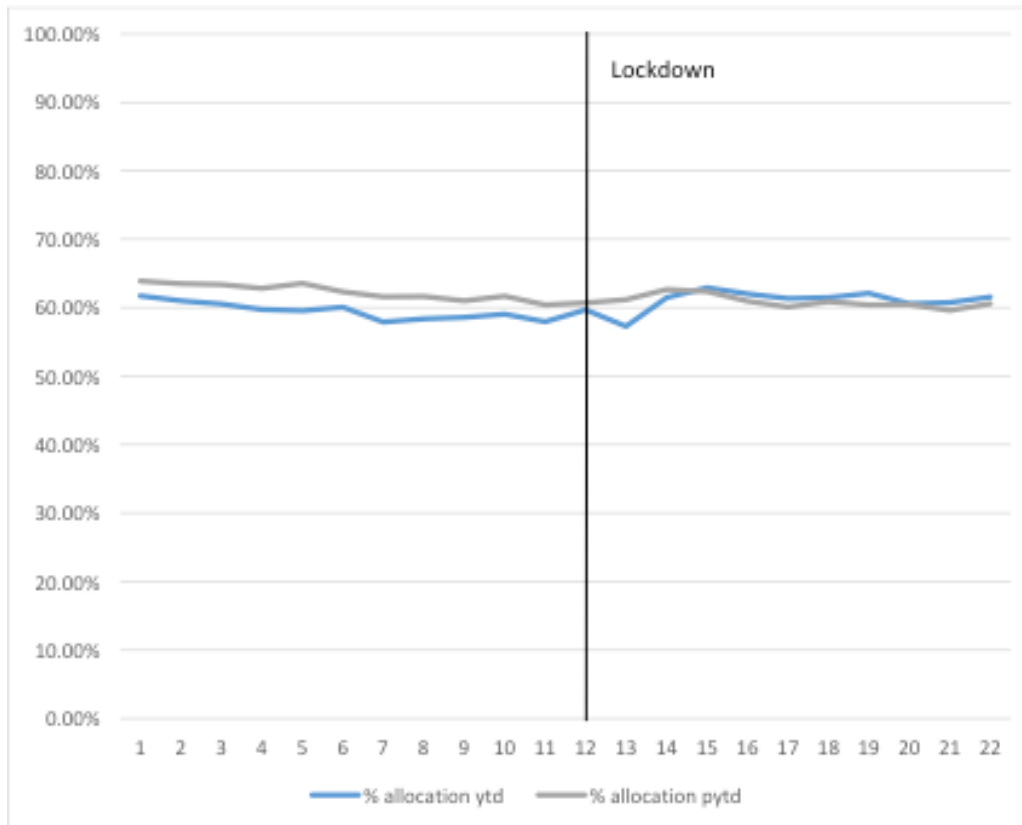


Figure 17: Percentage of recorded incidents per week involving resource allocation from Police Scotland (1st January to 25th May 2020 YTD and 2019 PYTD)

3.6.3 Change in incident and resource allocation by crime type

Figures 16 and 17 do not show the whole picture as they amalgamate all incidents together. However, **there were some distinct differences over time in terms of level of demand and response according to the type of incident recorded.**

Figure 18 shows the overall trend in terms of the number of incidents recorded each week by type of event before and after lockdown. Any incident that related directly to the policing of the lockdown was labelled 'Talla' (referring to Operation Talla, the name given to the UK police operation in response to the pandemic). Talla incidents were also recorded under another category heading according to the nature of the event, so there is some element of double counting here. Amongst the 'noise' of the different incident types, three stand out as being impacted during lockdown – 'Talla', 'Public Nuisance' and 'P.N. – Talla' (i.e. public nuisance minus Talla incidents).

Not surprisingly, incidents relating to Operation Talla incidents (represented by the solid red line) were non-existent until just before lockdown, but then increased dramatically in the early weeks of lockdown before gradually diminishing in number from late April onwards. The trend in public nuisance incidents (denoted by the dotted red line) mirrors that of Talla because **a large proportion of the calls received from the public during lockdown related to perceived breaches of the government regulations and guidelines** by neighbours or other members of the public (e.g. going out to exercise more than once a day or leaving home without a 'reasonable excuse').

The fall in public nuisance calls from late April coincides with a public announcement from Police Scotland around concerns that the high call volume would ‘reduce response times for real policing matters’.⁵ Members of the public were asked to consider whether such breaches were ‘serious’ enough to report to the police and encouraged to deal with the matter themselves, where possible (e.g. discussing it with their neighbours). While public nuisance calls did reduce substantially from early May onwards, it appears that this was not entirely due to the public messaging around Operation Talla because there was also a reduction in non-Talla public nuisance (represented by the broken red line). Indeed, the gap between the dotted red line and the broken red line makes it clear that **pandemic-related calls continued to make up the bulk of public nuisance incidents recorded until the end of May.**

Prior to lockdown, the most frequently recorded incident type was ‘assisting the public’ (which encompasses a broad range of issues requiring general assistance for members of the public around complaints, welfare concerns and low level disorder). Despite a slight dip in this type of incident (represented by a solid orange line) during the early weeks of lockdown, the trend in incidents requiring public assistance remained fairly stable. Road traffic incidents (represented by a solid grey line) was the second most frequent recorded incident prior to lockdown; however, **road traffic incidents fell dramatically in the month leading up to lockdown and then continued to remain low throughout the lockdown period.** The most likely explanation for this trend is the reduction in vehicles on the road as people were complying with the government regulations and guidelines.

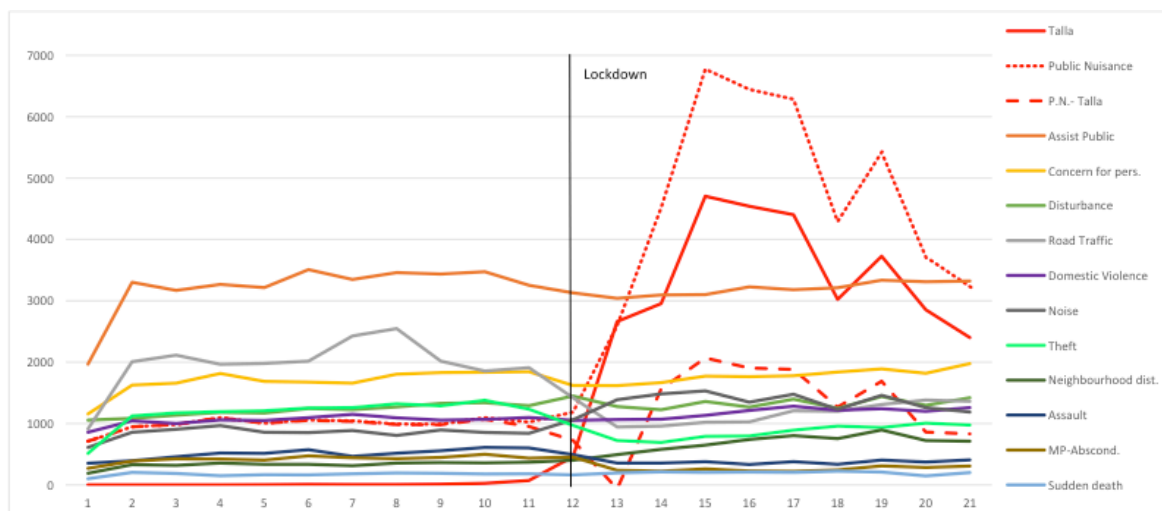


Figure 18: Total number of incidents recorded per week by type (1st January to 25th May 2020)

It is hard to differentiate any further trends from Figure 18 because the number of incidents recorded in the remaining categories is so much smaller. It is also impossible to differentiate any seasonal trends that were not related to lockdown. Therefore, further discussion about some specific incident types is provided below.

(i) Assisting the public

As noted above, incidents recorded as ‘assisting the public’ are amongst the most common types of occurrence dealt with by the police and typically involve minor or low-level problems. Figure 19 (left) shows that **the number of incidents recorded under ‘assisting the public’ fell immediately prior to lockdown and remained lower than normal.** The number of incidents recorded under assisting the public was lower in 2020 compared to 2019 both before and after

⁵ Police Scotland website - <https://www.scotland.police.uk/about-us/covid-19-policescotlandresponse/>

lockdown, although the gap was wider after lockdown. There was a slight increasing trend over time after lockdown, although this largely mirrors the seasonal trend observed in 2019.

Figure 19 (right) shows that the number of public assistance incidents allocated policing resource was also lower in 2020 than 2019. Around 70% of these incidents received resource allocation in 2019; however, this was around 2-3% lower in 2020 prior to lockdown, and then around 10% lower after lockdown. **It is likely that the reduction in allocation of police resource to deal these types of (mainly low level) incident may well have been a result of the pandemic and resource being deployed to other areas of operational business.**

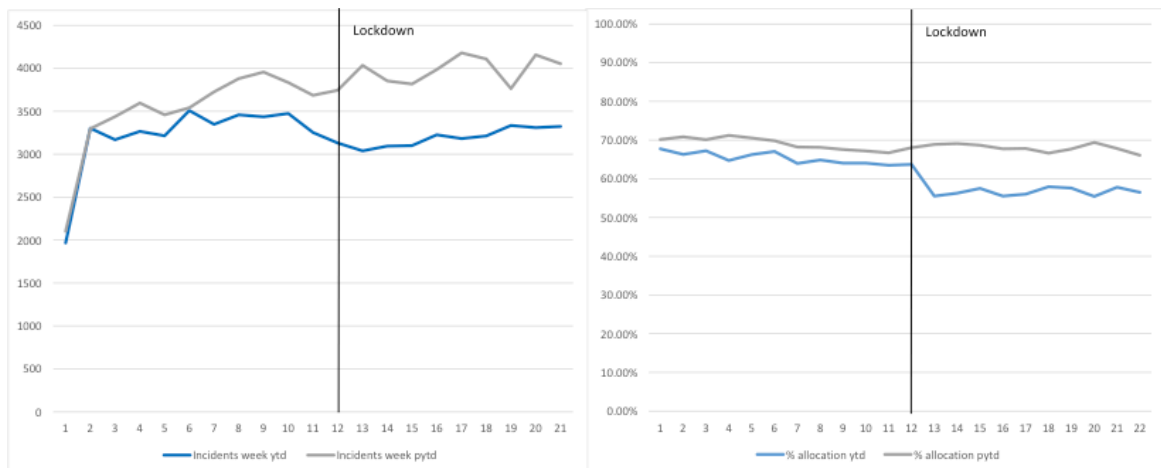


Figure 19: ‘Assisting the public’ – Number of incidents recorded (left) and percentage of incidents involving police resource allocation (right) per week (1st January to 25th May 2020 YTD and 2019 PYTD)

(ii) Public nuisance

Calls to the police about reports of non-compliance with the Coronavirus regulations and guidelines were typically recorded as ‘public nuisance’. Not surprisingly, therefore, the number of ‘public nuisance’ incidents increased dramatically following lockdown. When compared with the same figures for 2019, in Figure 20 (left), it is clear that **lockdown resulted in a surge of public nuisance incidents.**

The number of public nuisance incidents recorded reached its peak in mid-April, at which point it was more than three times higher than the previous year. Despite the large increase in demand, Figure 20 (right) shows that the police allocated resource to deal with between 70% and 80% of all incidents. Indeed, with the exception of a sharp reduction in resource allocation during the first week of lockdown, the proportion of public nuisance incidents that received resource allocation was slightly higher during lockdown than it had been during the same period in 2019.

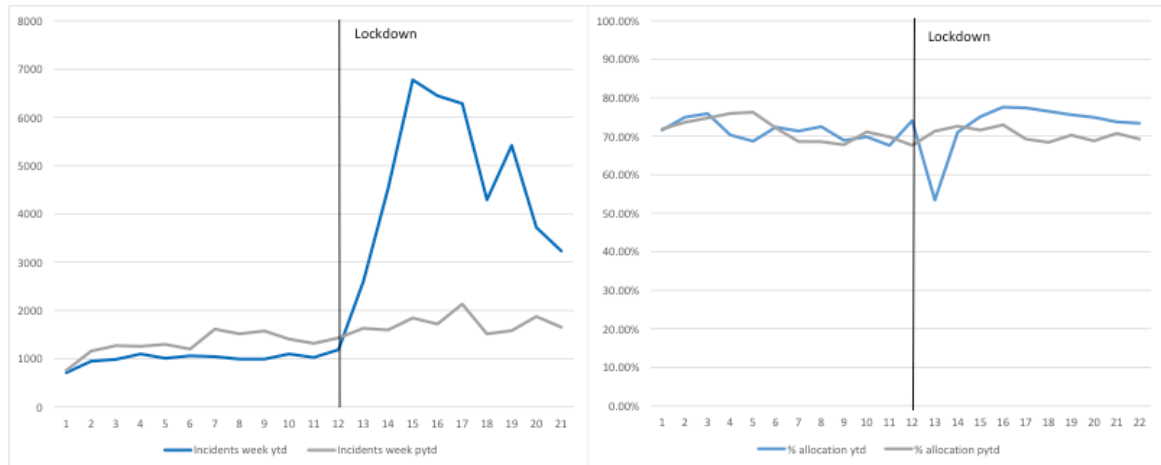


Figure 20: ‘Public Nuisance’ – Number of incidents recorded (left) and percentage of incidents involving police resource allocation (right) per week (1st January to 25th May 2020 YTD and 2019 PYTD)

(iii) Road traffic

The number of road traffic incidents recorded by Police Scotland (shown in Figure 21, left) started to decrease a month before lockdown, reaching its lowest number on the 29th of March (a week after lockdown). This slowly increased over the next two months, although by the end of May they had not returned to anything near pre-lockdown levels. It is clear from comparing the number of incidents in 2020 with that in 2019 that **road traffic incidents were significantly reduced as a result the pandemic.**

The proportion of road traffic incidents resulting in police resource allocation was around 50-55% prior to lockdown, but increased to around 60% after lockdown, and was higher than the equivalent period of 2019. This suggests that, while the number of incidents was lower, the level of policing remained at a consistent level.

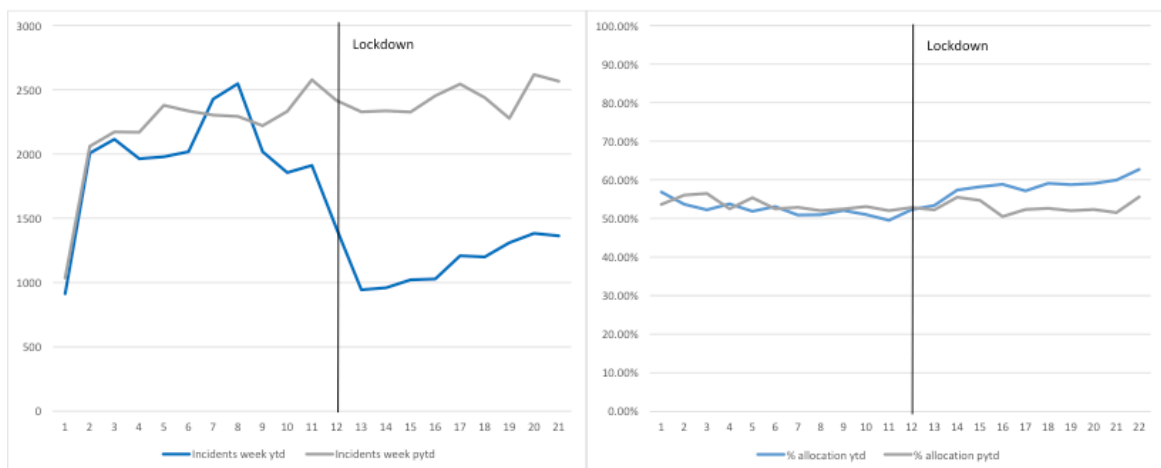


Figure 21: ‘Road traffic incidents’ – Number of incidents recorded (left) and percentage of incidents involving police resource allocation (right) per week (1st January to 25th May 2020 YTD and 2019 PYTD)

(iv) Theft

The number of recorded ‘theft’ incidents was consistently lower in 2020 compared to 2019, as shown in Figure 22 (left). Nevertheless, **there was a sharp reduction in thefts the two weeks immediately prior to and after lockdown which are almost certainly a result of the pandemic.**

Despite a steady increase throughout April and May, the number of theft incidents had not returned to anything like their normal level two months after lockdown.

Rate of resource allocation for theft incidents in 2019 varied from 40-50%, but in 2020 it was lower and varied from around 25-40% in 2020. It looks likely that **the rate of police resource allocation to theft incidents was lower during the lockdown period, and this was not explained by seasonal variation.** It is possible that this is explained by a greater reduction in more serious types of incident (such as housebreaking, because people were staying at home).

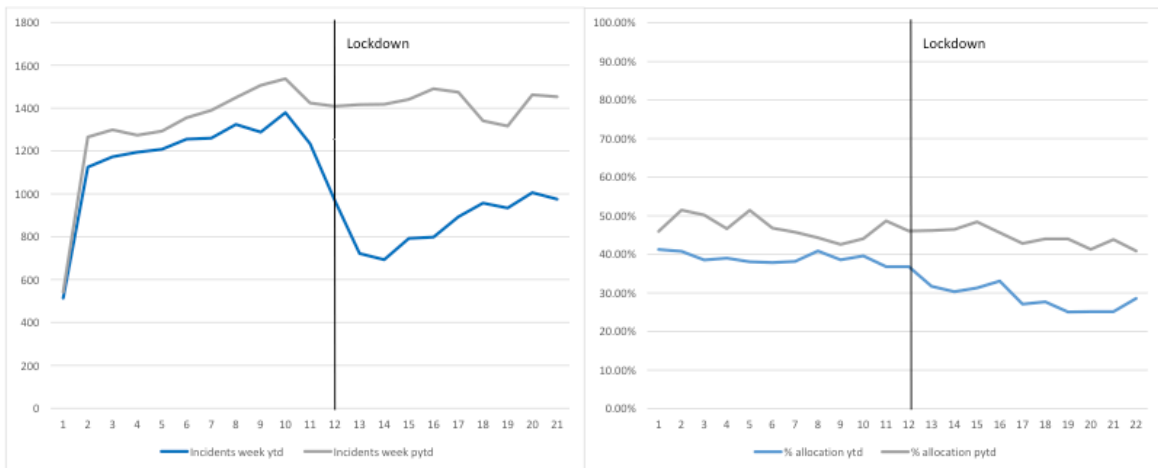


Figure 22: 'Theft incidents' – Number of incidents recorded (left) and percentage of incidents involving police resource allocation (right) per week (1st January to 25th May 2020 YTD and 2019 PYTD)

(v) Domestic violence

The number of domestic violence incidents recorded by the police increased during lockdown compared to previous weeks. However, Figure 23 (left) shows that Police Scotland recorded around as many incidents of domestic violence in 2020 as in 2019. This means that **the post-lockdown increase in domestic violence incidents recorded by the police was no different to that which would be expected as a result of seasonal variation.** This does not mean that domestic violence did not increase more than usual during this period (as there was a 50% increase in reports to Crimestoppers); however, this is not reflected in the policing data.

Resource allocation for domestic violence incidents is high, at almost 100% overall. Rate of **resource allocation to domestic violence cases remained very high during lockdown**, but was slightly lower at certain points – dropping to closer to 90% in weeks 16 and 22, when incident numbers increased.

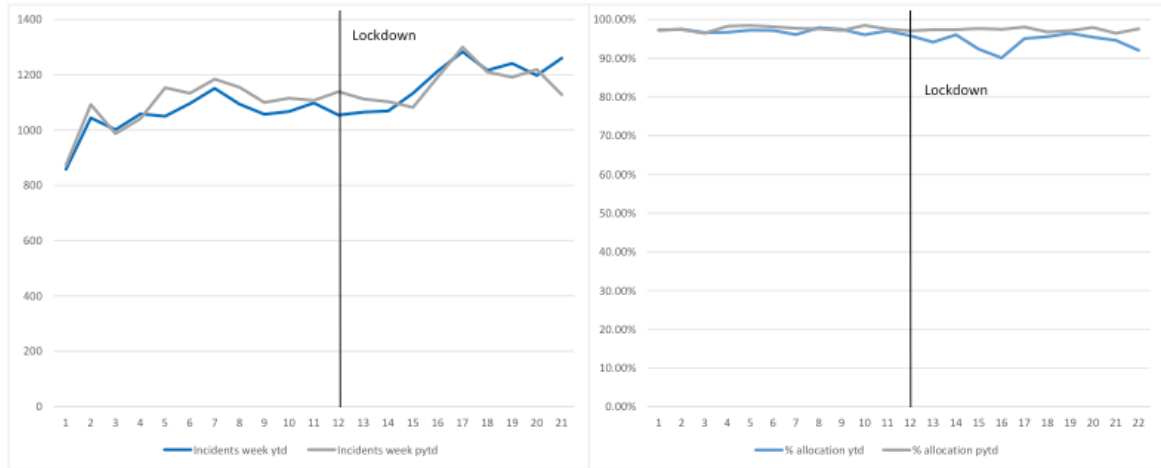


Figure 23: 'Domestic violence incidents' – Number of incidents recorded (left) and percentage of incidents involving police resource allocation (right) per week (1st January to 25th May 2020 YTD and 2019 PYTD)

(vi) Assault

Figure 24 shows that the number of assaults recorded by the police prior to lockdown was broadly similar to that during the previous year (although the number of assaults in 2020 did show a drop in mid-February that was not replicated in 2019). Nevertheless, **the number of recorded assaults declined by around 45% around the time of the lockdown and remained fairly low and stable throughout the first 2 months of lockdown.**

The pattern of resource allocation to incidents of assault in the pre-lockdown period of 2020 was broadly similar to the pattern for 2019, with around 90% of all incidents receiving resource allocation. However, **police allocation of resource for assault incidents during lockdown declined to around 75-80%, which was lower than the same period in 2019.** Again, it is possible that the overall reduction in assaults may have involved a greater reduction in serious assaults, which could explain the reduced likelihood of resource allocation.

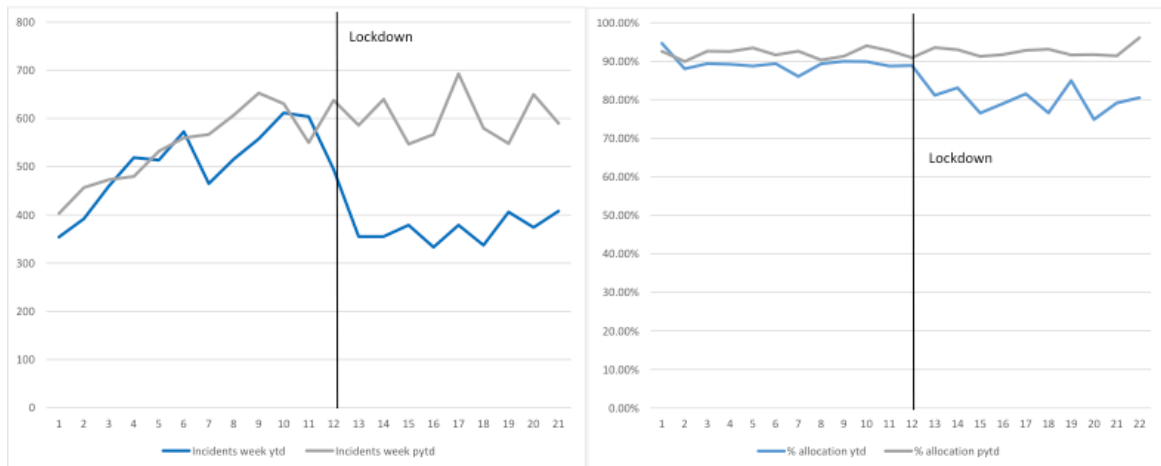


Figure 24: 'Assault incidents' – Number of incidents recorded (left) and percentage of incidents involving police resource allocation (right) per week (1st January to 25th May 2020 YTD and 2019 PYTD)

(vii) Noise

One of the main areas of concern reported by Police Scotland during lockdown was house parties and noisy neighbours. The number of incidents recorded that involved excessive noise did increase dramatically around lockdown, and remained high (albeit reducing slightly) during April and May. Interestingly, Figure 25 (left) shows that more noise complaints were recorded in the pre-lockdown period during 2019 than 2020, but this position reversed following lockdown in 2020. There is evidence that the increase in noise complaints reflects some degree of seasonality; however, even taking account of that, **the number of noise complaints recorded was substantially increased as a result of the pandemic.**

During 2019, the level of resource allocation for noise-related incidents declined slightly over time, from around 70% to 60%. In 2020, resource allocation showed a similar pattern to the previous year in the pre-lockdown period; however, police resource was allocated for up to 80% of incidents following lockdown. So **not only were the police dealing with a much higher than normal number of noise complaints, but they were allocating proportionately more resource to such problems as a result of the lockdown.** This is most likely because these noise complaints related to house parties or other social gatherings that constituted a significant risk to public health.

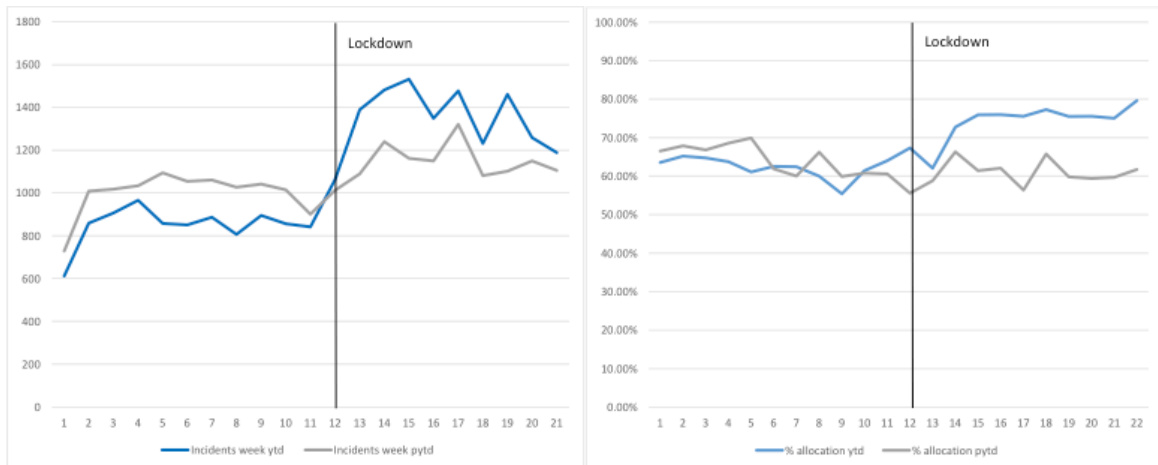


Figure 25: 'Noise incidents' – Number of incidents recorded (left) and percentage of incidents involving police resource allocation (right) per week (1st January to 25th May 2020 YTD and 2019 PYTD)

(viii) Neighbour disputes

Like noise complaints, the number of incidents recorded as 'neighbour disputes' showed a similar pattern in the first three months of 2020 to that of 2019. However, Figure 26 (left) shows **there was a large and sustained increase in the number of neighbour disputes recorded during the first two months of the lockdown that is not explained by a seasonal trend.** The number of neighbour disputes reached a peak in week 19, which coincides with the UK Government's announcement about plans to start relaxing the lockdown and a period of extremely hot weather, before reducing slightly.

As can be seen in Figure 26 (right), **while noise complaints saw an increase in resource allocation by the police during lockdown, the reverse was true for neighbour disputes.** The proportion of disputes receiving police officer allocation fell from around 80% prior to lockdown to around 40% at its lowest point. This suggests that the increase in neighbor disputes was most likely driven by low-level complaints (such as those described above under

‘public nuisance’) about breaches of lockdown rules, which were not indicative of a public health concern and, therefore, did not necessitate any specific resource allocation.

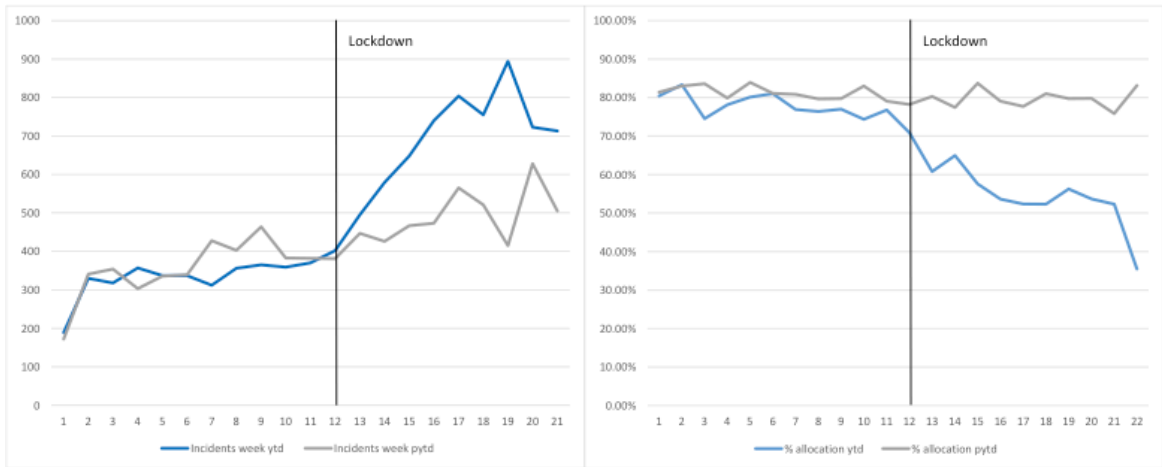


Figure 26: ‘Neighbour disputes – Number of incidents recorded (left) and percentage of incidents involving police resource allocation (right) per week (1st January to 25th May 2020 YTD and 2019 PYTD)

4. Public views about police use of the powers in Scotland

4.1 Profile of responses to the Citizen Portal

Under the Terms of Reference established for the IAG, it was important to gauge the views of member of the public about the police use of the temporary powers. Therefore, on 1st June 2020, the SPA launched a Citizen Portal to collect information from members of the public about their views on, and experiences of, the temporary police powers in Scotland. As of 16th June, 40 responses had been received.⁶ This section of the report provides a summary of these responses.

Amongst those who provided their demographic information, there was a fairly even split between male (19 out of 37) and female (18 out of 37); however, the age profile was skewed towards older participants. Most (29 out of 38) of the respondents were aged between 35 and 64, with only 7 being below age 35 and none under age 18. Most (28 out of 36) did not declare any religious affiliation, but a few identified as being Church of Scotland (4), Roman Catholic (3) or Jewish (3). Almost all (38 out of 39) respondents identified as belonging to a white ethnic group. Only one respondent identified as having a disability; and three individuals self-identified as belonging to the LGBT community.

It is clear that **there is a lack of diversity amongst those who have responded to the portal thus far**. It was not the purpose of the portal to generate a sample that would be representative of the population; rather, it was intended that as many people from different communities as possible would participate, especially those most likely to have been impacted by the Coronavirus pandemic and by the change in policing powers. Therefore, **achieving further responses from those in younger age groups, those belonging to a wider range of religious and ethnic groups, and those with disabilities would be desirable**.

4.2 Impact of the pandemic

All respondents said that the Coronavirus pandemic had impacted on them to some extent, but many (25 out of 40) reported that it had had a high impact.

A wide range of issues was presented in terms of both challenges and opportunities as a result of the lockdown. The three most common negative impacts were the disruption to people's jobs and work life, their sense of social isolation or loneliness, and the detrimental effect on their mental health and wellbeing. Also commonly reported were people's frustration at not being able to participate in their favourite leisure activities (such as hillwalking, golf and going to restaurants) and concern about economic hardship as a result of losing their job or having a reduction in income.

There were also some positive impacts reported, including getting more exercise, saving money, better eating habits and finding opportunities to help others, but these were far less commonly mentioned than the negative impacts. **Only one person mentioned fear of being caught by the police for breaking the lockdown regulations as a factor that had impacted on them**.

⁶ Because the number of responses here is so small, percentages are not provided.

Respondents were asked whether there were particular circumstances that had made it easier or harder for them to cope during lockdown, which also elicited a wide range of responses. The two most commonly mentioned factors that had helped people to cope were having a stable job or secure employment, and being able to stick to their normal routine. Other positive factors mentioned were having a garden or living in a 'nice' location, continuing to have contact with family (through quizzes, technology, etc), having good neighbours or a strong neighbourhood spirit, and achieving improvements in their fitness or lifestyle.

The two most commonly reported issues that made lockdown harder were living alone, which induced a deep sense of loneliness and isolation, and lack of social or physical contact with people. **Only two people mentioned other people's non-compliance with the lockdown regulations as a factor that had made things harder for them.**

4.3 Knowledge and experience of the policing powers

Most respondents (34 out of 40) said they had a fair amount or a lot of knowledge about the policing powers. However, **only 13 people reported that they and/or a friend or family member had experienced police contact** in relation to the temporary powers during lockdown.

Looking just at those who reported either direct or indirect experience of policing, most (9 out of 13) had involved face-to-face contact with the police, while the rest were by telephone. When asked what the police contact involved, it included an equal mixture of incidents where the respondent (or other person) had called the police in relation to someone else breaching the lockdown rules and occasions when the respondent (or other person) had been spoken to by the police about something they had done during lockdown.

There was a range of opinions as to how the police had behaved during these encounters; however, **the overall experience of police contact during lockdown was positive.** Most said the police had treated them (or the other person) very or quite fairly (8 out of 13) and had shown them a high level of respect (9 out of 12). Nobody stated that they thought the police had treated them differently to how they would have treated anyone else, although some (5 out of 13) were not sure. Some of those who'd had police contact (5 out of 12) thought that there were particular reasons or circumstances that had influenced the police's treatment of them (or the other person), although there was no clear or predominant pattern to these responses.

The most common outcome from these encounters was that the police took no further action (7 out of 13) or took the person's report (3 out of 13). On only one occasion was a fixed penalty notice issued. While most people reported having positive contact with the police during lockdown; overall, **they were around equally divided between those who said they were very or quite satisfied and those who were very or quite disappointed** (7 and 6 out of 13, respectively) with the police response received.

4.4 Opinion of police contact during lockdown

All respondents (regardless of whether or not they had reported police contact) were asked whether their opinion of the police had changed since the start of lockdown. **Most people (27 out of 38) said they had not changed their opinion of the police,** while the remainder were fairly evenly split between those who said their opinion had improved (6) and those whose opinion had got worse (5). In the case of those whose opinion had got worse, this included

some people who had reported an incident of police contact during lockdown (2) and some who had not (3).

Amongst those who said their opinion had improved⁷, **respondents referred to their appreciation of the frontline role of police officers in supporting the public health crisis** and were complimentary about Police Scotland's use of the 4 E's approach:

Police Officers have put themselves at risk to protect the health of our nation - is that really a police job? The fact that they've done it shows compassion and kindness

During lockdown, the police have been visible but have handled any situation I have seen in a calm and professional manner. They have not been heavy handed.

Amongst those who offered positive comments, **specific reference was made to local policing:**

My opinion has not changed much, I already have a high opinion. Our Community Police, in particular, are very good.

The police do a great job and Argyll and Bute officers are always courteous and helpful.

Amongst those who said their opinion had got worse, **some respondents thought the police use of the powers was excessive and unnecessary:**

Policing our common sense in these hard times, very disappointing.

While other respondents felt that the police were not using their powers effectively or frequently enough, especially as the lockdown progressed:

Additional powers are utterly futile if there is an unwillingness to use them.

They are letting the ... area be in total breach of lockdown with risks to community health.

At the beginning you could not fault them, stopping people in cars etc; but now they are not doing anything about the breaches.

There was some critique of the 4 E's policy and a concern that it had been a factor in non-compliance with the law:

Police Scotland made it public knowledge their policy was talking over enforcement and in doing so fatally undermined the new powers as a deterrent for behaviour change. The increase in lockdown breaches in recent weeks is the direct result of this flawed policy as the public know no action will be taken.

⁷ Quotations have been extracted from portal responses to provide context, but only if respondents gave permission.

4.5 Opinion of police use of the powers

Many (19 out of 40) respondents offered their views on the police use of the temporary powers. **Some recognised the challenges faced by the police in exercising their powers**, particularly in relation to lack of clarity between the law and the guidance, but also in terms of the undermining impact of high profile breaches. For example:

I think it's been very difficult for the Police to enforce the new powers as government guidance is too vague & government officials have not been sticking to the guidance so are not leading by example.

We don't know what is law and what is not, neither do a lot of your officers.

Others recognised the value of Police Scotland's commitment to the 4 E's approach and determination to use enforcement only as a last resort. Mention was made of witnessing local police officers acting 'sensitively' and 'without fuss', and positive reference was made to Police Scotland's communications strategy:

I thought that the announcement by Malcolm Graham at the start of Phase 1 of lifting lockdown was really welcome. He made it clear that the police would aim to be proportionate in any intervention on COVID and use the powers in a permissive and sensible way rather than being heavy handed and restrictive.

Nevertheless, **the desire for more direct action or enforcement was reflected in some responses**. Such comments were often based on a perceived lack of fairness that some people were 'getting away with' breaching the rules, while others were working hard to follow the guidelines to the letter. For example:

I'm disappointed about the lack of police presence I've seen on foot. For example, at nearby NAME Park, several groups flout the legislation and could easily be dispersed, but nothing is ever done (I have seen cars and vans go past on occasion).

Police should have been tougher with their powers. Exceptions were abused and police didn't take strong enough stance from the start resulting in people taking advantage of this.

Those I knew of regularly breaking the rules didn't care because they knew regardless of what they were doing, as long as they at least made it look like they were leaving, they could continue as soon as the officers left.

There was also a sense of frustration amongst those who felt the restrictions were no longer necessary. There was a perception amongst some respondents that the (increasingly unnecessary) rules should be lifted, and police work should be allowed to get back to normal:

I recognise that Police Scotland has to do what the Government dictates so if there is a chance for Police Scotland to feed back to the Government that the public consider it is now time to lift the COVID restrictions ... and let the Police get back to dealing with real crime, that would be most welcome.

5. Public complaints about police use of the powers

5.1 Number of complaints before and after lockdown

The public portal provides one source of data for ascertaining the views of the public about the new policing powers. Another source of data is the number of complaints received by Police Scotland. This section of the report examines the complaints received from members of the public during lockdown, and the extent to which this has been impacted by the lockdown.

In the two months following the start of the lockdown (25th March to 24th May), Police Scotland received 1,079 complaints. This compares to 1,071 in the preceding two months (25th January to 24th March), and represents **a non-significant increase in complaints of only 0.7%**. Of these complaints, just over 10% in each period (112 pre-lockdown and 117 post-lockdown) were made against centralised national policing units including: Contact, Command and Control; Criminal Justice Services Division; Operational Support Division; Corporate Services; and Specialist Crime Division. For the purposes of this briefing paper, we will focus on the other 90% that were made against officers or staff within local policing Divisions.

Figure 27 compares the number of complaints made per division in the pre-lockdown and post-lockdown periods (ordered by highest to lowest number of complaints post-lockdown).

Divisions containing larger populations or urban conurbations (including Glasgow, Aberdeen and Edinburgh) **tended to receive a higher number of complaints** than more sparsely populated or rural Divisions. Although, this was not always true, as demonstrated by the Scottish Lothians and Borders which is a fairly rural Division with several moderate sized towns.

For all but one Division, there was **no statistically significant difference in the number of complaints received pre and post-lockdown**. Only Lanarkshire had a **significantly higher number of complaints in the two months following lockdown** than the two months before. **Dumfries and Galloway had the greatest reduction in complaints** in the post-lockdown period, although the difference was not quite statistically significant.

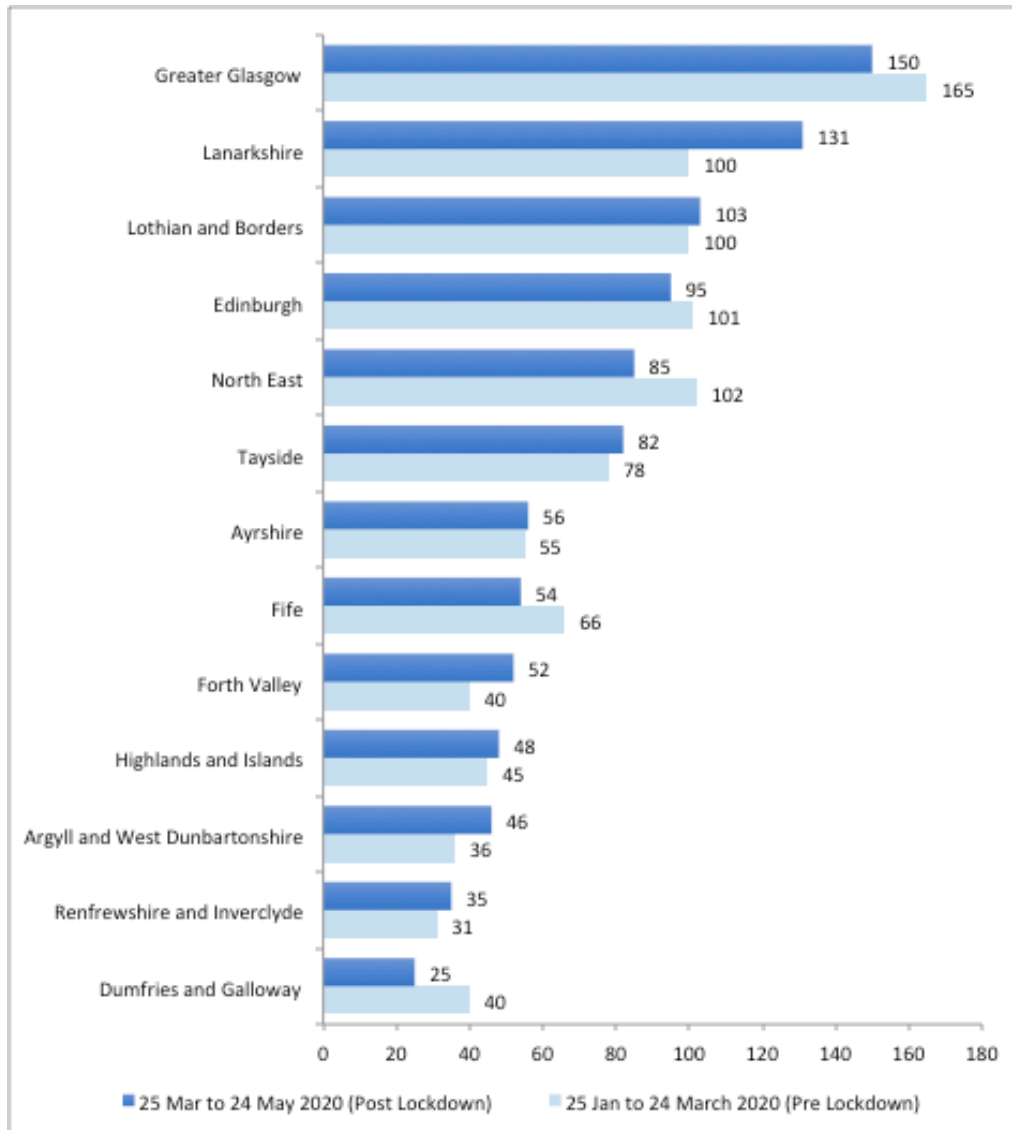


Figure 27: Number of complaints made against Police Scotland pre- and post-lockdown, by Division (25th January to 24th May 2020)

5.2 Number of complaints with frontline resolution

A large proportion of complaints against the police are resolved by frontline resolution (FLR). This process typically involves explanation, apology or assurance. The Professional Standards Department National Complaints and Resolution Unit (PSD NCARU) assess complaints to determine whether they are suitable for FLR. Where the complaint is assessed as non-criminal, minor or trivial in nature, the PSD NCARU will contact the complainer and attempt to resolve the complaint at an early stage.

The overall proportion of complaints resolved through FLR in the two months prior to the lockdown was 42%. This increased significantly to 64% in the two months after lockdown. In other words, **more of the complaints received in the first two months of the lockdown period were resolved through explanation, apology and assurance than in the prior two months.** This suggests that the PSD NCARU was assessing a much higher proportion of all complaints received during lockdown as being non-criminal, minor or trivial in nature.

Figure 28 presents the percentage of all complaints received during both periods in each Division that were resolved using FLR, ordered from highest to lowest in the post-lockdown period. It shows that **there was an increase in the proportion of complaints resolved within all Divisions after lockdown**, although the biggest increases tended to be in those Divisions that had a lower proportion of resolved complaints during the pre-lockdown period.

Five of the six Divisions in the West Command Area experienced a large and significant increase in the number of complaints resolved by FLR. This included Ayrshire, Renfrewshire and Inverclyde, Argyll and West Dunbartonshire and Lanarkshire (in which the number of complaints resolved had more than doubled) and Greater Glasgow (where they had increased by about 50%).

In the North Command Area, the number of complaints resolved in Tayside increased significantly and the percentage increase in the Highlands and Islands was almost statistically significant. In the East Command Area, only Forth Valley had a significant increase in the number of complaints resolved after lockdown.

These findings suggest that, **while there was no significant increase in the number of complaints in the two months following lockdown (with the exception of Lanarkshire), the nature of the complaints may well have become more minor, trivial and non-serious in nature** as they were more likely to be resolved by frontline resolution methods than the preceding months.

The conclusions drawn here are based on the assumption that there was no change in the process by which the PSD NCARU made decisions about complaints and that the number of complaints dealt with by FLR did not increase as a result of more resource being available. This is deserving of further investigation.

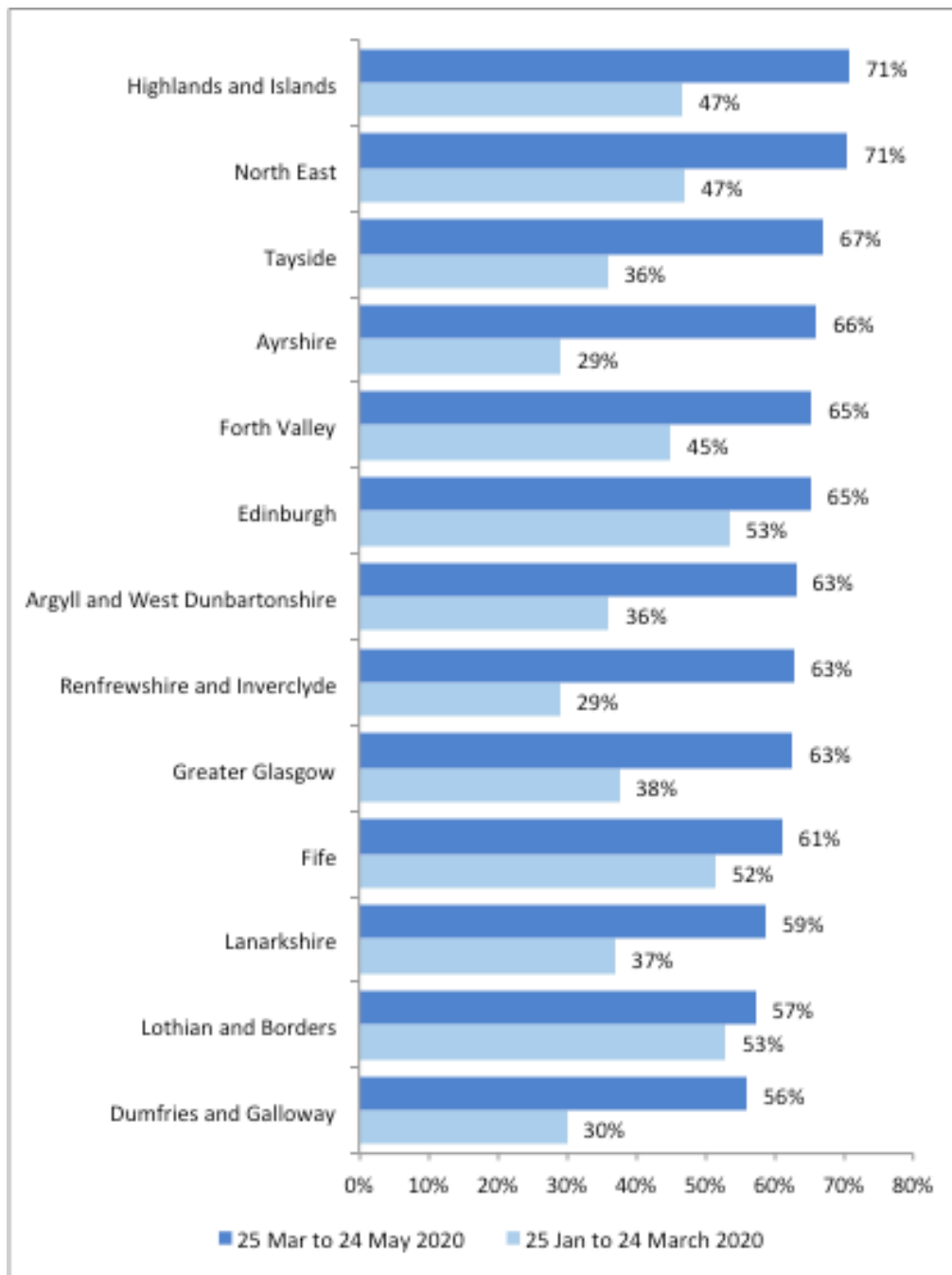


Figure 28: Percentage of all complaints resolved by frontline resolution pre- and post-lockdown, by Division (25th January to 24th May 2020)

5.3 Rate of complaints across Divisions

Comparing the number of complaints across Divisions is problematic as it does not take account of difference in population size (which is also typically related to police officer numbers and level of activity). For that reason, the rate of complaints was calculated using population data for 2018 (the most recently available). Rates were calculated per 100,000 people based on the population aged 16-59 in each Division.

Figure 29 shows the rate of complaints against the police per capita across the thirteen Divisions. Overall, **the lowest rate of complaints was in Renfrewshire and Inverclyde, while**

the highest was in Greater Glasgow which had a rate that was more than double that for Renfrewshire and Inverclyde.

Dumfries and Galloway stands out as having a much higher rate of complaints in the pre-lockdown period compared to that after lockdown. The rate of complaints in the other Divisions was broadly similar across the two periods, with Lanarkshire showing the biggest increase.

This ordering of the Divisions by rate of complaint was fairly similar to that shown in Figure 27 for the number of complaints. However, **the North East is further down the ranking in terms of rate of complaints compared to the number of complaints; whereas Dumfries and Galloway is higher up the ranking.**

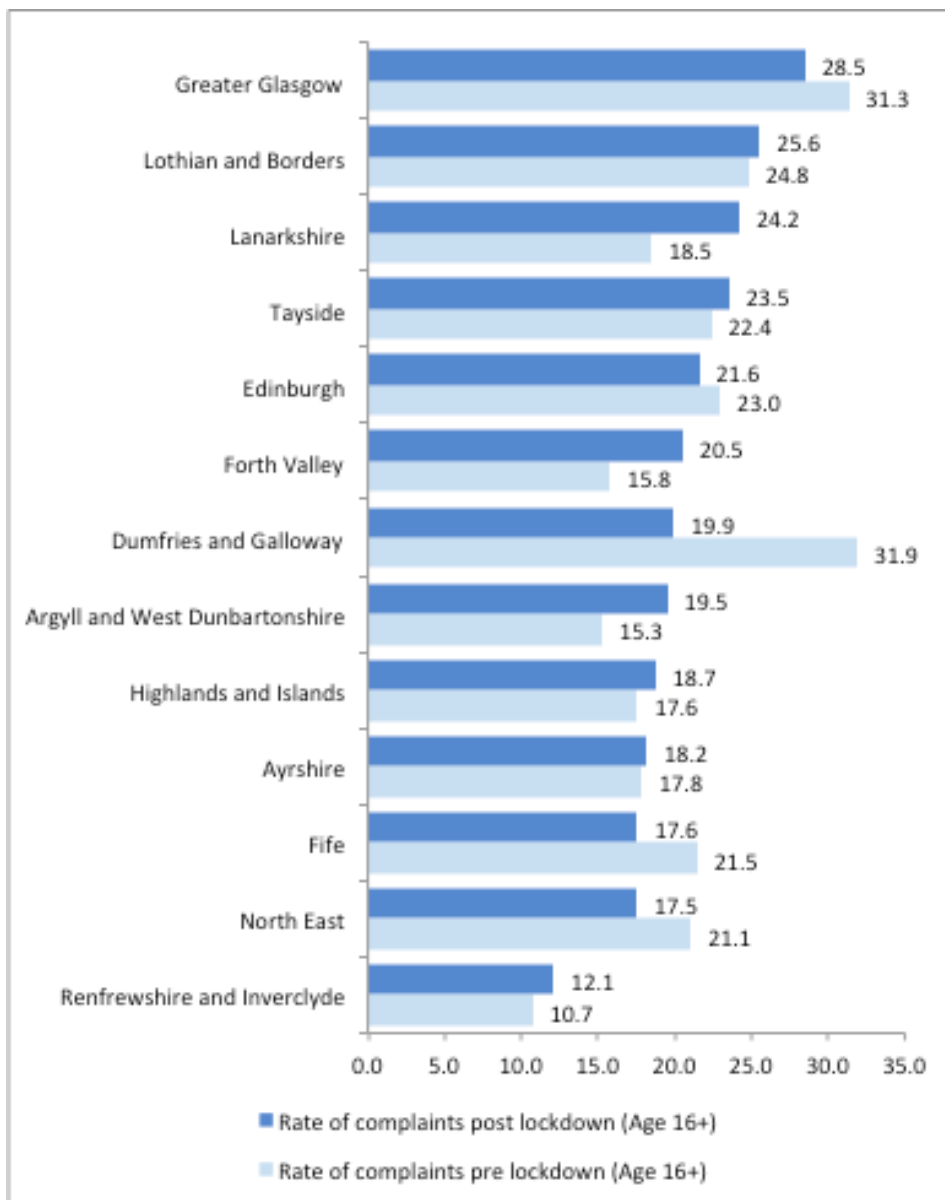


Figure 29: Rate of complaints per 100,000 people aged 16-59 pre- and post-lockdown, by Division (25th January to 24th May 2020)

Figure 30 shows the rate of complaints per capita during just the post-lockdown period with the average rate for the whole of Scotland shown in the lighter colour. Analysis shows that

Greater Glasgow was significantly higher than average and Renfrewshire and Inverclyde was significantly lower than average; however, the rates for the other Divisions were not significantly different to the average.

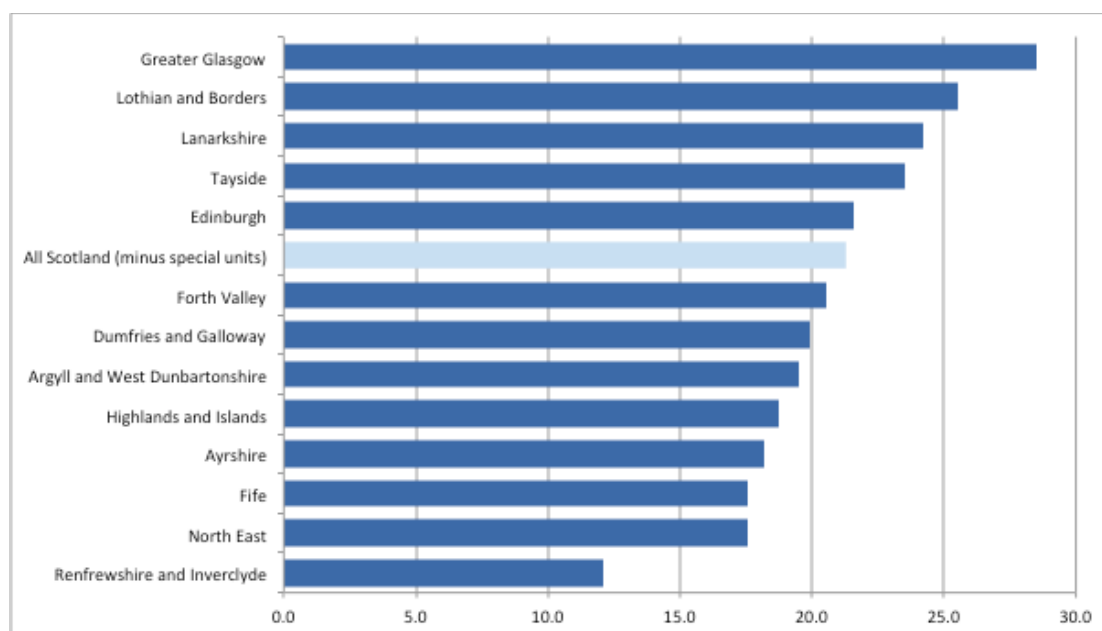


Figure 30: Rate of complaints per 100,000 people aged 16 or over post-lockdown, by Division (25th January to 24th May 2020)

These findings show that, **although there is a fairly substantial difference between Divisions in terms of the number of complaints, there is less difference in terms of the rates per capita.** During the lockdown period, the level of complaints was fairly evenly spread across Divisions with only Greater Glasgow and Renfrewshire and Inverclyde being outliers.

5.4 Difference in complaints compared to previous year

To take account of the possibility of any seasonal difference in the number of complaints, analysis was undertaken to compare the number of complaints for the period 25th March to 24th May 2020 with the same period in the previous year. This analysis was also conducted using rates per capita.

There were 1,016 complaints in the period from 25 March to 25th May 2019. That was only 63 fewer than the same period in 2020 and was not statistically significant. Thus, **there is no evidence of a significant change in complaints during lockdown compared to the same period last year.**

Figure 31 shows the difference in the number of complaints between the two time periods. Some Divisions had a higher number of complaints in 2020 and others that had a lower number. But the numbers are very small, and there is no evidence of any systematic difference across the two years.

Only two Divisions had a significantly higher number of complaints in 2020 compared to 2019: the Scottish Lothians and Borders and Argyll and West Dunbartonshire.

There was also a significantly higher number of complaints for Contact, Command and Control; although significantly lower numbers of complaints for some other specialist divisions (these are not shown here).

The number of complaints that was resolved through FLR was significantly higher during the 2020 period. Between 25th March and 24th May 2019, only 39% of all complaints compared to 64% during 2020 (as reported in section 5.2).

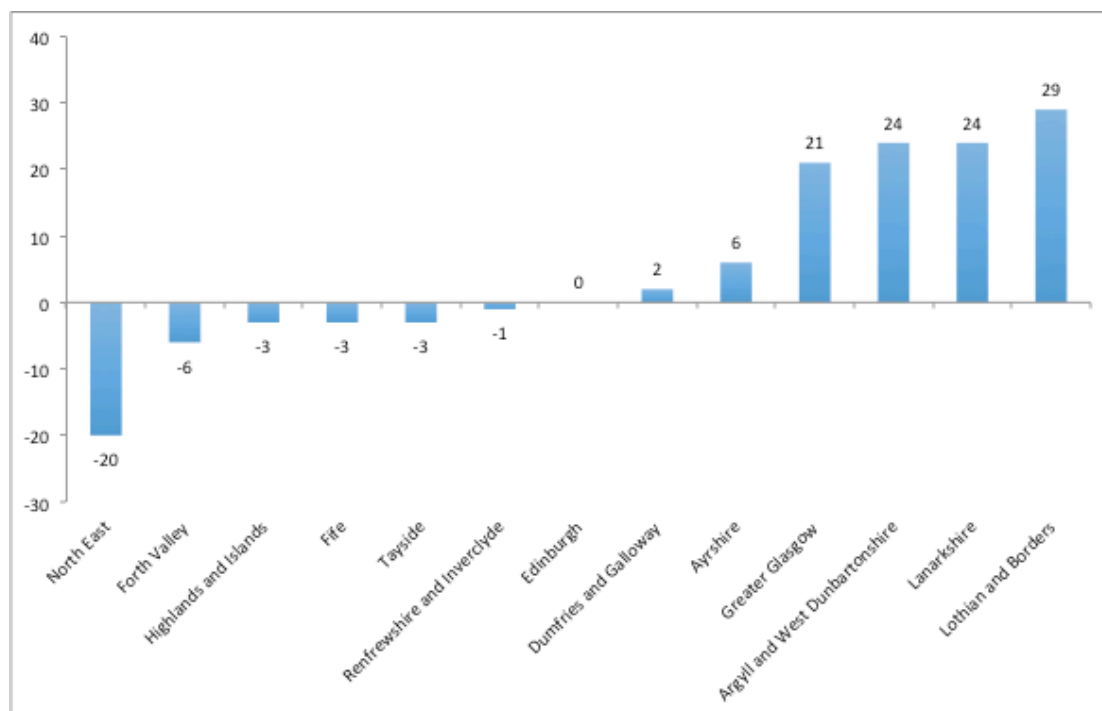


Figure 31: Change in the number of complaints from 25th March to 24th May 2020 compared to 2019, by Division

Overall, **these findings suggest some slight variation in the number of complaints during lockdown when compared with the same period of the previous year, but nothing to suggest the difference was either universal or substantial.** Nevertheless, there was clearly a qualitative difference in the nature of the complaints during the lockdown period, with a far higher proportion of them being resolved through engagement, apology or assurance.

5.5 Number of Operation Talla complaints

Finally, data was provided on the number of complaints during the lockdown period that were related in some way to the use of the temporary policing powers. Figure 32 shows the percentage of all complaints received during the two month lockdown period that were recorded as being related to Operation Talla. As can be seen, this varied quite widely from the highest proportion in Edinburgh and Tayside (just over 40%) down to Dumfries and Galloway at around 20%.

When the Operation Talla related complaints are excluded, **most of the police Divisions did have a significantly lower number of complaints in the two months after lockdown than the period before.** However, this is not an especially useful comparison.

On average, there were just under 25 Operation Talla complaints per Division. Edinburgh, Greater Glasgow and Ayrshire were found to have significantly higher numbers on average; whereas, Highlands and Islands, Fife, Renfrewshire and Inverclyde, and Dumfries and Galloway had lower than average numbers.

When calculated as a population rate, the North East and Renfrewshire and Inverclyde had a significantly lower rate of complaints compared to the average; however, there were none that were significantly higher than average.

The majority (71%) of all Operation Talla complaints were resolved through FLR, which suggests that they were primarily non-criminal, trivial and minor in nature. This is likely to explain the high level of resolution overall during the lockdown period.

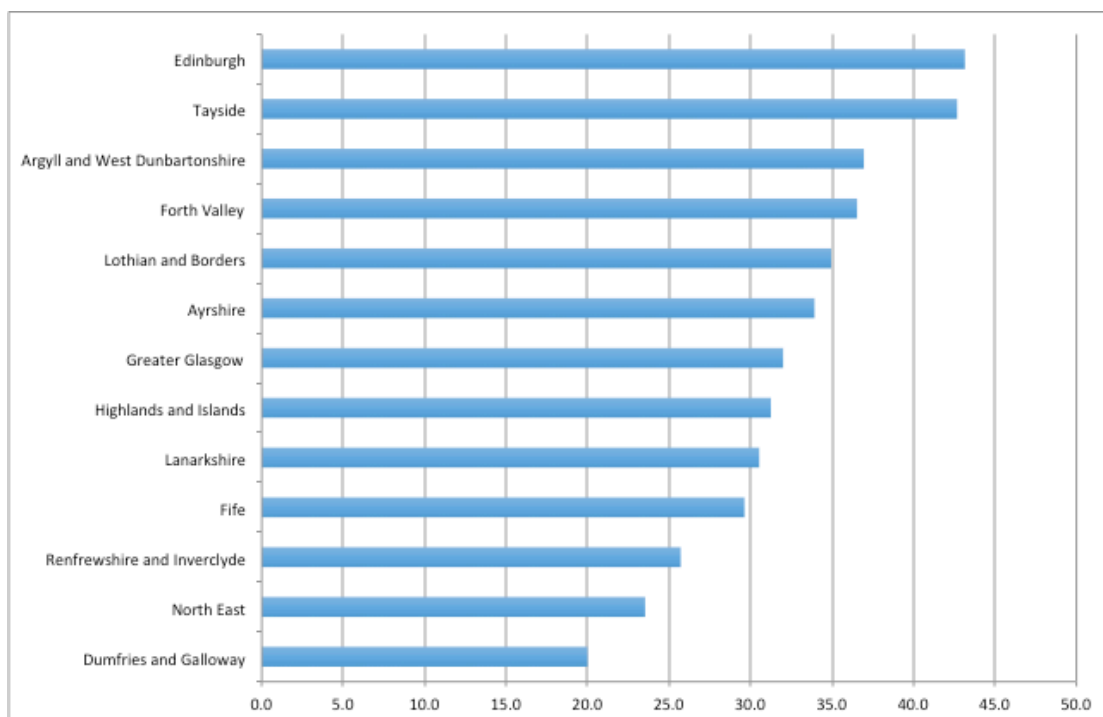


Figure 32: Percentage of all complaints during lockdown that were related to the use of the temporary powers, by Division (25th March to 25th May 2020)

These findings suggest that **there was a reduction in the number of ‘standard’ complaints during the first two months of the lockdown and that these were replaced with a similar number of Operation Talla complaints.** In some Divisions, Operation Talla made up a higher percentage of all complaints than others, most especially in Edinburgh and Tayside. Some Divisions had a higher than average number of Operation Talla complaints overall; however, when calculated as a rate per capita there were few differences, with no Divisions being significantly higher than the Divisional average.

Overall, therefore, there is **no evidence of a huge surge in complaints** against the police as a result of the use of the temporary powers; **no evidence of a systematic bias** across Divisions in the number or rate of complaints received; and evidence to suggest that **most of the Operation Talla related complaints were of a trivial and non-criminal nature.**

6. Concluding points

This report provides detailed analysis of some of the data gathered by the Independent Advisory Group (IAG) in its review of Police Scotland's use of the new temporary powers created under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations. The data presented in this report were provided by Police Scotland's Operation Talla Information Collation, Assurance and Liaison (OpTICAL) Group or collected through the Scottish Police Authority's Citizen Portal. Further data collected to support the work of the IAG includes two waves of a public survey commissioned by the SPA, findings of which are published on the SPA website⁸; and qualitative interviews with police officers from three Divisions conducted by HM Inspector of Constabulary in Scotland. The findings presented in this report should be considered in the wider context of these other sources of data.

The data presented in this report suggest that the lockdown has had a significant impact on policing in Scotland. It resulted in the introduction of a new set of temporary policing powers that required Police Scotland to adapt many aspects of operational and tactical policing, including substantial changes to its resource deployment strategy, to meet the challenges of maintaining public health in the context of a global pandemic. It also contributed to significant fluctuations in levels of demand for, and capacity to respond to, wider incidents of crime, disorder and public safety. The speed with which the new policing powers were introduced undoubtedly caused some confusion, and it is clear that in the early weeks of the lockdown policing practice developed somewhat differently across the country. However, as time has gone on, differences in practice have diminished, and the consistent messaging around the use of engagement, explanation and encouragement, before moving to enforcement, has led to a predominant use of dispersals with only a small proportion of encounters involving Fixed Penalty Notices or arrests.

Differences in the use of the powers in terms of absolute numbers and rates per capita are clear across the thirteen Divisions. These are likely to be due to a wide range of factors including geography, local context and policing capacity. However, discrepancies in the relative use of the different intervention types (from the lowest levels of dispersal through to arrests) have gradually diminished over time, to the extent that practice is now fairly consistent across the country. Changes in the nature and extent of wider policing demands during lockdown, both crime and non-crime related, created more challenges for policing in some respects (particularly in terms of public nuisance, noise complaints and neighbour disputes) but diminished in others (such as road traffic incidents, theft and assaults). Nevertheless, the level of police response remained fairly consistent, albeit varying to respond to the level and nature of demand across incident types. Overall, it appears that policing capacity has been redeployed where necessary to cope with the emerging challenges during lockdown.

Public opinion is, perhaps unsurprisingly, split between those who support Police Scotland's measured approach to the use of the new powers and those who feel it should have been more robust. This is a difficult, if not impossible, balance to achieve and the pandemic has only thrown into sharp relief the perpetual challenge for policing organisations to meet the wide and varied expectations of the public. Nevertheless, there has been no increase in complaints against the police in Scotland as a result of the pandemic and no evidence of systematic bias in levels of concern across the country. Moreover, the data suggest that the bulk of the complaints received during lockdown have been dealt with quickly by explanation, apology or assurance, rather than

⁸ See findings of Wave 1 published on 5th May - <http://www.spa.police.uk/assets/128635/616689/618686/618690>; and Wave 2 published on 18th May 2020 - <http://www.spa.police.uk/assets/128635/616689/618686/619616>.

through formal mechanisms. While comparisons with other countries are difficult to make, and conclusions must be drawn with caution; rates of Fixed Penalty Notices suggests that Police Scotland's approach has been somewhat more robust than that of police forces in England and yet more lenient than that of forces in Wales. So perhaps it has found the difficult 'middle ground' in terms of its approach to exercising the temporary policing powers.

The main area that this report has not considered is the profile of those individuals who have been subject to enforcement under the temporary policing powers. Data collection to support this aspect of the IAG's deliberations is ongoing, but expected to be completed before the end of July. These data will enable the IAG to examine the demographic characteristics (including age, sex and ethnicity) and personal circumstances (including employment status and criminal history) of those individuals who were issued with a FPN or were arrested during the course of the lockdown. This will be a valuable addition in terms of considering whether the police use of the powers has disproportionately impacted on particular groups within the population. Results of this work will be published in future reports.

Appendix 1

Rates based on population size

Rates of intervention according to population size were based on Mid Year Population Estimates for 2019 (the most recent available) from the National Records of Scotland. Population estimates were calculated for all those aged 16-59 based on the assumption that the majority of interventions would involve people within this age range. These figures can be adjusted once further information on the age profile of interventions is available. See <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

Rates based on police officer numbers

To provide an alternative comparator for policing activity, rates of intervention according to police officer numbers were based on the number of police officers assigned as local resources to each Division within Scotland. Note that the figures used did not take account of police officers assuming positions that cover the whole of Scotland or the three Command Areas. Data were based on the figures for 31st March 2020 (the most recent available). See <https://www.scotland.police.uk/assets/pdf/138327/212520/police-scotland-officer-numbers-quarter-4-31st-march-2020?view=Standard>

Sources of information on Fixed Penalty Notices

England & Wales: <https://news.npcc.police.uk/releases/statistical-update-on-lockdown-fines-given-by-police-in-england-and-wales>

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