

## ANNEX A

In response to 1, while our aim is to provide information whenever possible, in this instance we are unable to provide the information you have requested because exemptions under Section 29(1)a and Section 30(b)i of FOISA apply to that information. The reasons why those exemptions apply are explained in Annex C of this letter.

However, regarding your interest in the Committee session on 23 June, I have disclosed some information from the Cabinet Secretary for Justice's Committee briefing, dated 22 June, which you may find helpful. This information has been extracted from the briefing paper and information relevant to quarantine checks, as mentioned in your request, is provided.

### How will people be followed up?

- We will follow up a proportion of people through telephone calls to establish if they need any information or guidance or other support. This is not for the purposes of enforcement but to offer help and allow us to gather some broad anonymised information. That information will be

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included as part of our overall data on contact tracing. This will be available from week beginning 22<sup>nd</sup> June (workforce will then be in place).

- **If pressed:** likely to be in the region of up to 20%, which, with current passenger numbers of c200 a day equates to around 350 passengers a week.

## How do we know people will comply with the self-isolation ?

- The First Minister has repeatedly stated that there is a social contract with the public and we expect the public to follow the health advice to save lives
- We also urge the public to report to the police where they think people who have recently travelled back to Scotland are not complying with these measures.
- There is a limited capacity for Police Scotland to police this, but where Police Scotland are informed of a potential breach of these regulations, they have available to them from the Home Office, the ability to access travel history.

## Who will be checking compliance with those self-isolating in Scotland?

- Police Scotland does not have a proactive policing role when individuals are in Scotland; however they have powers to carry out enforcement activity in response to breaches they encounter in the course of their other duties
- Police Scotland will use enforcement powers if they have reason to believe that anyone is breaching their mandatory self-isolation but will maintain a proportionate approach, seeking to engage, educate, and encourage compliance.
- Police officers can issue Fixed Penalty Notices of £480 for breaches of the requirement to self-isolate but enforcement will be the option of last resort.

## Police Scotland enforcement

- Police Scotland has powers to carry out any enforcement action necessary based upon the 4 Es approach (where officers, Engage, Explain, Encourage and only Enforce if absolutely necessary).
- This approach has proved effective in securing high levels of compliance with the domestic lockdown measures.
- For breaches relating to self-isolation requirements under these Regulations, the financial penalty is set at £480, which aligns with the maximum FPN level Police Scotland can currently issue for breaches of the domestic lockdown regulations.
- For these offences, there is no further escalation in the level of fines but subsequent offences will be reported to the Procurator Fiscal.
- The fine level for these offences differs from that in England, which is set at £1000 but reflects the different approach to Fixed Penalty Notices in Scotland's criminal justice system.
- The fine level of £480 balances the public health imperative to provide a strong deterrent along with the need to ensure penalties are compatible with existing penalty frameworks in Scotland.
- Police Scotland has confirmed that it has received no reports of breaches and has taken no enforcement activity under these Regulations (as of 22 June 2020).

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## In country

- The police will not take a pro-active role in enforcing compliance with self-isolation. They will act primarily where they have clear evidence that an offence has been committed.
- In those circumstances, as well as issuing FPNs, under the regulations, the police will have the ability to direct or remove individuals to their home or wherever they should be isolating.
- Immigration Enforcement officers will not be designated with powers under the new Regulations but, in extreme cases of non-compliance, should support any enforcement action taken police by considering whether to pursue removal under immigration powers where it is proportionate to do so.

## Data Sharing – Police Scotland

- The information provided on the passenger locator forms will be collected by the Home Office and the data shared with Police Scotland (on request). Police Scotland will be able to make enquiries to the Home Office on a case by case basis to allow them to conduct any follow up with individuals
- The Police will only have access to data for the purposes of their enforcement role under these regulations and not for any other purpose. If additional information is sought from an individual to determine whether an offence has been committed that will be carried out by police officers under caution.
- A Memorandum of Understanding between Home Office and Police Scotland is being finalised.
- Police Scotland has finalised its Data Protection Impact Assessment
- A joint 4 Nations engagement process has also taken place with the Information Commissioner (ICO).

## Data Sharing – Approaches - Scotland

- HO have developed a function to share locator form data with **PHS**. Scotland working to security clear technical staff so they can access the database directly.
- It is planned that **PHS** will conduct follow up calls with travellers who are self-isolating to provide public health advice, information and guidance not assurance calls to check if arrivals are self-isolating.
- Referrals will not be made to **Police Scotland**.
- **Police Scotland** will have the ability to submit name queries to the HO database to confirm self-isolation status of individuals reported to them by the public, once they have finalised their MOU with HO.
- **Police Scotland** MoU signed off.
- Awaiting comments from **PHS** on the MoU.
- **SCTS** MoU to be sent to SCTS for agreement

- children and adults will be required to self-isolate, and liable to offences for failure to do so in their own right. There is an additional provision that, where a constable has reasonable grounds

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for suspecting that a child has repeatedly contravened the requirement the constable may direct any individual who has responsibility for the child to ensure, so far as reasonably practicable, that the child complies with that requirement.

## Police Scotland's concerns

- During the development of these measures, Police Scotland raised a number of concerns around fine levels and the proactive enforcement approach proposed in England where police forces would be responsible for following up referrals from the private contractor undertaking sample checks on travellers self-isolating in England. Main concerns included:
  - Police enforcement would have significant resourcing implications and the practical application of enforcement would be extremely challenging
  - Approach would signal a departure from current messaging around public health response and policing by consent; jeopardising the goodwill built up around public compliance with social-distancing.
  - The £1,000 level of FPN is in excess of what Police Officers can currently issue and exceeds those available under the Fiscal fine scales.
  - There would be significant operational and technical challenges associated with the differing penalty amounts for offences requiring additional resource considerations across justice partners to implement.
  - The need to consider the consequential impact on the judicial system where substantial fiscal penalties are issued to persons who may be known to be leaving the country again within a short time period.
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- Appearing before the Justice Sub-Committee on 9 June 2020, the Chief Constable spoke of his reservations about the demands potentially to be put on Police Scotland, which could affect levels of public trust but recognised need to strike the right balance in the interests of public health. He raised some concern around the speed of new legislation, saying 'It's been difficult for the legislation to be implemented, the speed of it has been a challenge and the awareness and understanding of it' - but confirmed that the force was working very hard to provide the right guidance and information for their people. The Chief Constable again emphasised that he expected Police Scotland's enforcement role to be very much a 'backstop'.

The Cabinet Secretary believed this briefing to be correct when giving evidence on 23 June. However, the Cabinet Secretary wrote to Lewis Macdonald, MSP, Convener of the Health and Sport Committee, on 7 July, providing further information on contact with travellers arriving in Scotland. The correspondence can be found on the Scottish Parliament website under 'Subordinate (Secondary) Legislation and Legislative Consent Memorandums', "COVID-19 related Scottish Statutory Instruments" on 23 June 2020, available at: [Subordinate \(Secondary\) Legislation and Legislative Consent Memorandums - Parliamentary Business : Scottish Parliament](#). Under section 25(1) of FOISA, we do not have to give you information which is already reasonably accessible to you. If, however, you do not have internet access to obtain this information from the website(s) listed, then please contact me again and I will send you a paper copy.

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