

## **Lord Advocate's Guidelines on the Operation of the Fixed Penalty Notice Scheme under The Health Protection (Coronavirus) Regulations 2020**

The Health Protection (Coronavirus) Regulations 2020 include:

The Health Protection (Restrictions) (Coronavirus) (Scotland) Regulations 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020, the Health Protection (Coronavirus)(Restrictions and Requirements)(Local Levels)(Scotland) Regulations 2020 and the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020.

The Health Protection (Coronavirus) Regulations allow for a fixed penalty notice to be issued to an individual who has committed an offence under the Regulations and is aged 18 years or over.

A fixed penalty notice under these Regulations is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty in accordance with these Regulations.

The penalty payable is £60 unless £30 is paid before the end of a 28 day period beginning with the date of the fixed penalty notice.

If the person to whom a fixed penalty notice is given has already received a fixed penalty notice under any of the Regulations then the penalty payable in the case of the second fixed penalty notice will be £120 and any third or subsequent penalty notice received is double the amount specified in the last fixed penalty notice, to a maximum of £960.

The Lord Advocate therefore instructs that, in general, fixed penalty notices should be issued in respect of minor offences committed under the Health Protection (Coronavirus) Regulations 2020.

*Generally*, it will be appropriate to issue fixed penalty notices in circumstances in which police officers would otherwise have considered submitting a report to the Procurator Fiscal for a minor fixed penalty offence. However, a police officer's discretion to take no action or to issue a verbal warning in respect of certain incidents remains unaltered by the introduction of this scheme. In addition a Recorded Police Warning may be issued for these types of offences.

Before considering whether a fixed penalty notice should be issued, police officers should satisfy themselves that there is a sufficiency of evidence to establish the commission of an offence and the identity of the accused as the perpetrator, i.e. there must be at least two sources of evidence which corroborate that a fixed penalty notice offence has been committed and that the person, to whom the fixed penalty notice will be issued, committed the offence.

The word "minor" cannot be precisely defined and assessing whether an offence is "minor" will involve the exercise of discretion on the part of police officers, but generally it will *not* be

appropriate to issue fixed penalties where it is clear that the offending was motivated by a deliberate intention to repeatedly frustrate the restrictions being imposed by the UK or Scottish Governments and/or there is a substantial risk of the actions resulting in harm to an individual, groups of individuals or society as a whole. In such cases a report to the Procurator Fiscal will be appropriate.

It is **not** appropriate to issue Fixed Penalty Notices where it is known that an offender has been issued with four fixed penalty notices for any combination of offences under the Health Protection (Coronavirus) Regulations or where the offence is part of an incident involving more serious offending behaviour by the offender. In such cases a report to the Procurator Fiscal will be appropriate.

### **Reports submitted to the Procurator Fiscal**

When a fixed penalty notice has been issued and an offender requests a court hearing within the 28 day payment period, and the case is reported to the Procurator Fiscal, the police report should state that the offender was originally issued with a fixed penalty notice and the value of that notice.

November 2020