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Criminalisation and Covid-19: Examining the Use of the Criminal Law as a Response to the Pandemic

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Abstract

This thesis seeks to examine the use of the criminal law as a response to the Covid-19 pandemic in Scotland. The onset of the pandemic resulted in extraordinary restrictions on civil liberties, made enforceable through criminalisation of ordinary social activity.

A wealth of academic literature exists on the proper scope and limits of the criminal law, seeking to identify principles to guide legislators in deciding what conduct should, or should not, be criminalised. It is therefore surprising that so little attention has been paid by criminal lawyers and theorists to this unprecedented expansion in the criminal law. These theoretical perspectives can provide a framework for examining criminalisation in this context: by providing a normative basis for analysing whether and how these offences might be justified, and against which to review how these were used in practice.

Whilst the existence of these offences was itself significant, given the scope of their prohibitions, an account of Covid-19 criminalisation which focused only on the content of legislation would be an inherently limited one. The new offences created cannot be fully understood without seeking to understand the approach taken by those charged with their enforcement. To that end, empirical research has been undertaken in the form of a case review exercise authorised by the Crown Office and Procurator Fiscal Service. This provides the most comprehensive examination of the reporting and prosecution of these offences in Scotland which has been attempted to date.

A number of trends emerge from this research, which are set out and analysed. The findings from the empirical research are then drawn together, along with insights from criminal law theory, to reflect upon how the rationale for criminalisation was understood, and to explore the implications for future practice.

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Acknowledgments

The idea of writing this thesis first occurred to me in the spring of 2020, during the profound anxiety and boredom of the first “lockdown”. As social life resumed and my work commitments (as a criminal prosecutor, employed by COPFS) re-intensified, the notion of part-time research, perhaps unsurprisingly, fell by the wayside.

This ambition never disappeared entirely. I am extremely grateful to all those who encouraged me to follow through on this and who have provided advice and support throughout. In that regard, special thanks are due to my wife, Samantha. Since I started this degree, we have moved in together, bought a house, became engaged, and planned a wedding. It has spanned some crucial milestones in our lives. Her love, patience, willingness to discuss ideas, and to proofread my work (in the knowledge that I would ignore many of her corrections) has been invaluable.

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The usual caveats follow. Any views expressed, and any errors, are entirely my own.

Declaration

I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Printed Name: Jamie Hilland

Signature:

Date: 7 July 2026

Introduction

“Let me be blunt. The stringent restrictions on our normal day-to-day lives that I’m about to set out are difficult and they are unprecedented. They amount effectively to what has been described as a ‘lockdown’....But these measures are essential for the protection of all of us. Coronavirus is the biggest challenge of our lifetimes. And the measures we take to tackle it must reflect the magnitude of that.”

- First Minister Nicola Sturgeon, 23 March 2020¹

At 8:30pm on 23 March 2020, the Prime Minister gave an exceptional televised address in which he announced national “lockdown” measures. Citizens were urged to “stay at home, protect our NHS and save lives”.²

Statements from the First Ministers of Scotland³ and Wales⁴ followed later that evening, in equally stark terms.

The following day, the House of Commons passed primary legislation empowering the Scottish Ministers to make regulations “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)”.⁵ This included the power to create criminal offences.⁶

The scope of this delegated authority would soon be laid bare. Regulations came into force in Scotland on 26 March 2020. Together with the equivalent regulations in England, Wales and

¹ “Coronavirus: Nicola Sturgeon says new rules amount to ‘lockdown’”, BBC News (23 March 2020) <<https://www.bbc.co.uk/news/uk-scotland-52007540>>. See embedded video. All links last accessed on 3 April 2026.

² “Prime Minister’s statement on coronavirus (COVID-19): 23 March 2020”, UK Government website (23 March 2020), <<https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020>>.

³ Footnote 1.

⁴ “Coronavirus: Stay at home, first minister tells Wales”, BBC News (23 March 2020) <<https://www.bbc.co.uk/news/uk-wales-52012772>>. There was no equivalent statement from the First Minister of Northern Ireland.

⁵ Paragraph 1(1), Schedule 19 to the Coronavirus Act 2020.

⁶ Ibid, paragraph 5(2)(b).

Northern Ireland, these have since been described as “almost certainly the most severe restrictions on liberty ever imposed” in the United Kingdom.⁷

These criminalised *inter alia* public gatherings of more than two persons residing separately and leaving home without a reasonable excuse. The First Minister of Scotland’s declaration that “this is not to be seen as optional”⁸ was now accompanied by the force of law.

Further regulations expanded or otherwise modified the scope of the criminal restrictions. These changed frequently and increased in complexity, as can be seen from the timeline, and summary of the relevant offences, in Chapter 1.2 and Appendix 1. Notwithstanding this, “the rules” were widely accepted and followed.⁹ Academic critics tended to focus on the constitutional and human rights implications of the emergency measures, including the conflation of law and guidance and shortcomings in parliamentary and judicial scrutiny.¹⁰ Remarkably little attention has been paid by criminal law academics to this enormous expansion of the criminal law.

Two possible explanations can immediately be identified. Firstly, the relatively low maximum penalties attached to most offences under the regulations. These were mostly summary-only offences¹¹ punishable by a fine. Secondly, the restrained use of such offences by law enforcement agencies. Where enforcement action was taken, the vast majority of offences

⁷ T Hickman, E Dixon and R Jones, “Coronavirus and Civil Liberties in the UK” (2020), Blackstone Chambers <<https://coronavirus.blackstonechambers.com/coronavirus-and-civil-liberties-uk/>>.

⁸ “Coronavirus (COVID-19) update: First Minister’s speech 23 March 2020”, Scottish Government website (23 March 2020) <<https://www.gov.scot/publications/first-minister-covid-19-update-1/#>>.

⁹ L Wright et al, “Patterns of compliance with COVID-19 preventative behaviours: a latent class analysis of 20,000 UK adults” (2022) 76(3) *Journal of Epidemiology and Community Health* 247. One UK-wide study concluded that 97% reported largely or completely following law and guidance during the first lockdown, and over 80% throughout the pandemic: D Fancourt et al, “Tracking the Psychological and Social Consequences of the COVID-19 Pandemic across the UK Population”, UCL (September 2022) <<https://www.nuffieldfoundation.org/wp-content/uploads/2020/04/CSS-Final-Report.pdf>>.

¹⁰ Footnote 7. See also: J Sumption, “Government by Decree: Covid-19 and the Constitution”, Cambridge Freshfields Annual Law Lecture (2020)

<https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf>; A Wagner, *Emergency State* (2022, The Bodley Head); A Tomkins, “Constitutional Government in the Time of Covid: the Scottish Experience” (2023) 27 *Edin LR* 284; P Grez Hidalgo, “Legislative and Judicial Scrutiny of the Emergency Response to the Pandemic in the UK: Stubborn Accountability Gaps” (2023) 27 *Edin LR* 310; D Lock, P Grez Hidalgo and F De Londras, “Parliament’s One Year Review of the Coronavirus Act 2020: Another Example of Parliament’s Marginalisation in the Covid-19 Pandemic” (2021) 92 *Political Quarterly* 699.

¹¹ Prosecutable only before a Justice of the Peace (“JP”), or a Sheriff sitting without a jury. The maximum sentence open to a Sheriff in summary proceedings is 12 months’ imprisonment (18 months’ imprisonment if the accused was on bail when the offence was committed).

resulted in Fixed Penalty Notices (“FPNs”) being issued.¹² More than 40% of these charges reported to the Procurator Fiscal were dealt with by alternatives to prosecution.¹³

Nevertheless, this phenomenon deserves greater attention. The pandemic resulted in extraordinary restrictions on civil liberties, made enforceable through criminalisation of ordinary social activity. This persisted for more than two years. During this period, extremely coercive constraints were placed on the entire population, backed up by the threat of punishment. Although enforcement was treated as a last resort, a not insignificant number of people in Scotland were arrested or given FPNs. Hundreds of charges were prosecuted in court. Criminal convictions were secured.

More fundamentally, this use of the criminal law should be examined because of its apparent novelty. A wealth of academic literature exists on the proper scope and limits of the criminal law. These normative theories are generally concerned with the inherent harmfulness or wrongfulness of an individual’s conduct. The extremely broad criminal offences created during the pandemic do not immediately appear to sit comfortably with these doctrines.

This thesis explores the justification in principle for this expansion of the criminal law, and its use as a public health tool. I will seek to examine the rationale underpinning these new offences and assess whether theories of criminalisation can account for this.

A worthwhile thesis could be written on this basis alone. However, such a project would inherently be a limited one, where the analysis of criminal law principle risked being divorced from the reality of prosecutorial practice. This unprecedented expansion of the criminal law cannot be fully understood without understanding the approach taken by those charged with its implementation.

To that end, empirical research has been undertaken: a case review exercise authorised by the Crown Office and Procurator Fiscal Service (“COPFS”). This has been supplemented both by material already available in the public domain, and Freedom of Information (“FOI”) requests. Taken together, these have enabled me to build a more detailed picture of the prosecution service’s approach to such offences in Scotland.

This research will demonstrate that the offences under the regulations formed only one part of the prosecution landscape. Existing crimes were commonly used in this context. The

¹² See Chapter 4.2.1. An FPN is an on-the-spot fine issued by police officers. Acceptance does not result in a conviction.

¹³ See Chapter 4.2.2.

prosecution of former MP Margaret Ferrier for the common law offence of culpable and reckless conduct – by travelling to various locations following a positive Covid-19 test¹⁴ – was one high-profile example of a wider practice.

My focus will be on behaviour which was not previously criminal. The commission of existing offences by already-recognised means (such as assaults by spitting, aggravated by the risk of transmitting Covid-19) are beyond the scope of this research.

In Chapter 1, I survey the new offences created by Covid-19 legislation. Chapter 2 uses criminal law theory to consider their justification. Chapter 3 discusses criminalisation of transmission and exposure to infectious diseases, highlighting the elasticity of the pre-pandemic common law – the boundaries of which were pushed further in this context. In Chapter 4, I present my findings from the case review exercise. In my conclusion, I identify the main themes which emerged from this, and how these might bear on the rationale for criminalisation.

My contention will ultimately be that a failure to articulate a clear set of arguments for criminalisation was reflected in a haphazard approach towards enforcement of Covid-19 offences.

¹⁴ “MP Margaret Ferrier pleads guilty to exposing public to Covid”, BBC News (18 August 2022) <<https://www.bbc.co.uk/news/uk-scotland-62589375>>.

Chapter 1 – The Covid-19 regulations

1.1 Introduction

My starting point is to provide an outline of the criminal offences created in response to the Covid-19 pandemic in Scotland. Limited space precludes me from detailing every restriction and obligation imposed at different stages of the pandemic. For ease of reference, I have provided a timeline of the relevant criminal offences at Appendix 1.1.¹⁵

A multitude of offences were introduced by primary and secondary legislation, constraining individuals and persons acting in special capacities (such as the owners of hospitality premises), and seeking to ensure that the substantial enforcement powers conferred upon officials could be utilised effectively. My ultimate focus is on the regulations which affected the daily lives of most citizens: on previously widespread behaviour which was made criminal.

1.2 Timeline and overview of legislation

An overview of the legislative framework follows. The “main” regulations are examined in more detail at Chapters 1.3 to 1.4 below.

Authority to make regulations creating criminal offences was delegated to the Scottish Ministers by the Coronavirus Act 2020. Schedules 21 and 22 to the Act also created several offences.

The first set of regulations – the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (“the March 2020 regulations”) – came into force the following day. This set the broad template for each of the subsequent regulations: providing a series of “requirements” and a single criminal offence of failing to comply with these requirements, subject to a general defence of reasonable excuse.¹⁶

Its widest reaching prohibitions – particularly the “stay-at-home requirement” created by regulation 5 – were amongst the pandemic’s broadest and most restrictive. These were

¹⁵ See also – timeline published by the Scottish Parliament Information Centre: “Timeline of Coronavirus (COVID-19) in Scotland”, SPICe website (10 May 2023) <<https://spice-spotlight.scot/2023/05/10/timeline-of-coronavirus-covid-19-in-scotland/>>.

¹⁶ This also created two offences relating to enforcement of these provisions.

amended on numerous occasions, (broadly) permitting a gradual resumption of social life, including (most significantly) revocation of regulation 5 on 10 July 2020.¹⁷ Some additional requirements were also imposed, such as wearing a face covering on public transport and in shops¹⁸ (which was later expanded to include certain other indoor places) and a prohibition on “parties” (16 or more people) in private dwellings.¹⁹

Between 5 and 25 August 2020, additional restrictions were imposed in the Aberdeen local authority area, relating to the closure of businesses.²⁰ Further powers were then delegated to councils by the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 (“the Directions by Local Authorities regulations”). These enabled local authorities to give directions “imposing prohibitions, requirements or restrictions” in relation to specified premises (regulation 5), specified events, (regulation 6) or specified public outdoor places (regulation 7) within their area.

On 14 September 2020, the March 2020 regulations were revoked and effectively replaced by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 (“the September 2020 regulations”). These did not contain a stay-at-home requirement but continued to regulate outdoor and indoor gatherings, required certain businesses to close and imposed curfews on hospitality premises. These contained the first useful restrictions on indoor gatherings in dwellings between persons living separately: as introduced, these were limited to 6 persons from 2 households; from 26 September 2020, these were prohibited.

These regulations were suspended by the Health Protection (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020, (“the Additional Temporary Measures regulations”) which came into force on 9 and 10 October 2020. These maintained existing rules while imposing greater restrictions (on hospitality, licensed premises and other businesses) in certain Central Belt areas.

¹⁷ The Scottish Government published a blueprint for this re-opening: “COVID-19 – Framework for Decision Making: Scotland’s route map through and out of the crisis” (21 May 2020) <<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/05/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/documents/covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/govscot%3Adocument/covid-19-framework-decision-making-scotlands-route-map-through-out-crisis.pdf>>.

¹⁸ Regulations 6A and 6B respectively.

¹⁹ Regulation 6ZA.

²⁰ The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 (“the Aberdeen City regulations”).

On 2 November 2020, a uniform national approach was abandoned. The Health Protection (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (“the Local Levels regulations”) came into force, classifying council areas into four tiers with different rules, to reflect varying rates of transmission. Following the emergence of a new, more infectious Covid-19 variant, a second national “lockdown” was imposed.²¹ This was achieved by amending these regulations (on Boxing Day 2020) to designate all of mainland Scotland as “level 4” areas. The height of “level 4” restrictions re-imposed a stay-at-home requirement, restricted social gatherings and imposed new prohibitions on movement within, to and from Scotland.

The Local Levels regulations were revoked on 9 August 2021. The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (“the August 2021 regulations”), which came into force that day, focused more on responsibilities for commercial premises and venues than on individuals. The requirements to wear face coverings on public transport and at certain indoor premises were retained, as were obligations relating to “track and trace”,²² and capacity limits for venues. Restrictions on travel and on gatherings were not.

Meanwhile, alongside changing domestic rules, regulations relating to international travel were introduced and repeatedly amended. From 8 June 2020, obligations were imposed on operators of international passenger services²³ to provide specific public health information to passengers travelling to Scotland. The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (“the International Travel regulations”) imposed obligations on passengers, including the completion of a Passenger Locator Form,²⁴ and increasingly complex rules on testing and quarantine.

Regulation 6(2), as introduced, required travellers to Scotland from outwith the Common Travel Area (the UK, Ireland and the Crown Dependencies) to travel, without undue delay, to specified premises (normally the address in their Passenger Locator Form) and not to leave there for 14 days (from arrival in the CTA) or until their departure from Scotland. Regulation 9(6) provided a defence: an exhaustive list of permissible reasons for being outside of the

²¹ “New guidance issued for the festive period” (19 December 2020), Scottish Government website <<https://www.gov.scot/news/new-guidance-issued-for-the-festive-period/>>.

²² Requiring persons responsible for hospitality and entertainment venues to collect the names and telephone numbers of patrons, their date and time of arrival and share this information with the authorities for the purposes of contact tracing.

²³ The Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020 (“the Public Health Information regulations”).

²⁴ Providing personal, travel and emergency contact details.

specified address, which were narrower than the general defence of “reasonable excuse” contained in other regulations.

A scheme of “hotel quarantine” for travellers from outwith the CTA came into force on 15 February 2021. The key provisions added were regulations 6A and 6B: the requirements to possess a “managed self-isolation package” and to stay in “managed accommodation” respectively. This was later redrawn, to move to a three-tier, “traffic light” system, which mandated hotel quarantine for travellers from “acute risk countries or territories” only (the “red list”). Travellers from “non-exempt countries or territories” (the “amber list”) had to isolate at their specified address. There was no requirement to isolate for travellers from exempt countries or territories (the “green list”), subject to existing obligations (in regulations 5A to 5K) to obtain a negative PCR test.

On 20 September 2021, the regulations relating to international travel were consolidated.²⁵ The precise rules continued to evolve, though this structure was retained until revocation on 18 March 2022.

The final regulations containing criminal offences were, for the most part, revoked on 18 April 2022.²⁶ This ended a period of more than two years in which the nation lived under these (at times, very onerous) emergency regulations.

1.3 Structure and content of the “main” regulations

1.3.1 Introduction

Having outlined the Covid-19 regulations in Scotland in broad brushstrokes, I now seek to examine their most significant provisions in greater detail. These were the legal rules directed towards the public generally and contained within the “main” regulations in force at any given time. These were (to recap):

- The March 2020 regulations;
- The September 2020 regulations;

²⁵ The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (“the Consolidated International Travel regulations”).

²⁶ The Directions by Local Authorities regulations, which did not themselves impose restrictions, remained in force until 24 September 2022.

- The Additional Temporary Measures regulations; and
- The Local Levels regulations.

As noted above, the August 2021 regulations were not primarily directed towards private individuals, and their overall effect was not as onerous as their predecessors.

Examination of each of the main regulations reveals a striking similarity in form. Each of these contained a single offence of contravening any of their requirements;²⁷ an offence of obstructing a person carrying out a function under the regulations; and an offence of failing to comply with a direction, reasonable instruction or prohibition notice given by a relevant person. These offences were all subject to a general defence of “reasonable excuse”.

Significant common ground can also be found in their content, even as the precise rules changed. Each of these regulations, and each of the “local levels”, required some businesses and services to cease trading; restricted the sale of food or drink for consumption on hospitality premises; imposed responsibilities on proprietors to take measures to mitigate transmission risks (such as by ensuring two-metre distancing); required the wearing of face coverings; and, to varying extents, restricted indoor and outdoor gatherings between people living separately.

The most substantial differences between these regulations were of degree rather than character. For this reason, and given the confines of my research, I do not intend to compare their content extensively. I will instead comment on the nature of the offences (and defences) and highlight evolving rules in three areas: stay-at-home requirements; social gatherings; and restrictions on travel.

1.3.2 The general offences

The legal rules underpinning the first national lockdown in Scotland were contained in the March 2020 regulations. Together with the Local Levels regulations, these represented the high-water mark of legal intervention (and enforcement) during the pandemic. This also set the template for its successors.

²⁷ With some exceptions. For example, the requirements for proprietors to have regard to guidance issued by Scottish Ministers.

The March 2020 regulations stated a series of requirements to do or to refrain from doing certain things. Regulation 8(1) made failure to comply with these requirements criminal. This straightforwardly read:

A person who contravenes a requirement in regulations 3 to 7 commits an offence.

This basic formulation was retained for the “general” offence in each of the main regulations.²⁸ At this stage, it is worth reflecting on the most significant requirements for the general public: restrictions on movement and gatherings.

The most extraordinary provision in the Covid-19 regulations was contained in regulation 5(1) of the March 2020 regulations, which stated:

Except to the extent that a defence would be available under regulation 8(4), during the emergency period, no person may leave the place where they are living.

It is difficult to imagine a wider-reaching criminal offence. To borrow Duff’s terminology, this made citizens answerable to the state – though not necessarily liable²⁹ – for their mere presence in any place outside of their residence.

This was accompanied by conferment of very broad enforcement powers. Police constables were empowered – without any express qualification – to “take such action as is necessary” to enforce the requirements in each of these regulations.³⁰ Anyone reasonably believed by police officers to be outwith their residence could be questioned and called upon to provide an explanation. They could be forcibly returned home and, if no satisfactory reason were forthcoming, potentially liable for an on-the-spot fine or reported for prosecution.

This requirement (imposed for three months) later re-appeared in the “level 4 restrictions” of the Local Levels regulations – applying to all of mainland Scotland from 5 January to 31 March 2021. This declared that: “a person who is living in a level 4 area must not leave the place where that person is living”.³¹

²⁸ The March 2020 regulations, regulation 8(1); the September 2020 regulations, regulation 15(1); the Additional Temporary Measures regulations, regulation 26(1); and the Local Levels regulations, regulation 5(1). The offences relating to enforcement were in sub-regulations (2) and (3) of the respective regulations.

²⁹ R A Duff, *Answering for Crime: Responsibility and Liability in the Criminal Law* (2007, Hart) (“Duff, *Answering for Crime*”), Chapter 1 – especially pg.19-23.

³⁰ The March 2020 regulations, regulation 7(1); the September 2020 regulations, regulation 14(1); the Additional Temporary Measures regulations, regulation 25(1); the Local Levels regulations, regulation 4(1).

³¹ Paragraph 17(1), Schedule 5 to the Local Levels regulations.

From 16 January 2021, the words “or remain outside of” were inserted into this provision. In theory, this extended potential liability considerably as the original reason for leaving home might not justify someone’s continued presence elsewhere. Hypothetical scenarios illustrating the point are not difficult to imagine. A person who left home for exercise and rested on a park bench for an “unreasonable” period would arguably have contravened the amended, but not the original, restriction. Whether this distinction was ever drawn by law enforcement agencies is a different question – and is doubtful, in the absence of any data or updated guidance suggesting a change in approach.

While these requirements were undoubtedly the most onerous, restrictions on social gatherings also drastically limited lawful social activity – and remained in force for a lengthier period. The March 2020 regulations, as enacted, prohibited more than two persons from separate households meeting in public places. Notably, the Scottish Government’s public health guidance until 29 May 2020 advised against any in-person social interaction with another person outside of one’s household.³² This was not confined to gatherings of three or more and did not distinguish between public and private places. Therefore, the legal prohibition was narrower than this guidance. This was the most restrictive version of this rule, which took various forms during the pandemic.³³

In Autumn 2020, as social activity moved indoors, the government’s focus shifted. The First Minister declared that “large house parties pose a real and significant risk of causing clusters and outbreaks”.³⁴ From 28 August 2020, legal restrictions on gatherings extended into private residences.³⁵ Indoor “household mixing” was thereafter prohibited for months at a time. A table showing the oft-changing and increasingly complex law on gatherings is included at Appendix 1.2.

Meanwhile, citizens had been urged from the outset not to leave their local authority area for exercise or recreation. Travel to natural beauty spots was repeatedly discouraged. Nevertheless, “non-essential travel” was never specifically criminalised.

³² One article reported that “the new rules mean that people from two households can meet outside”. “Coronavirus: Scotland begins to ease out of lockdown”, BBC News (29 May 2020) <<https://www.bbc.co.uk/news/uk-scotland-52837564>>.

³³ See Appendix 1.2.

³⁴ “Coronavirus (COVID-19) update: First Minister’s speech 20 August 2020”, Scottish Government website (20 August 2020) <<https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-20-august-2020/>>.

³⁵ Footnote 19.

Travel restrictions were later inserted into the Local Levels regulations. Residents in “level 3” and “level 4” areas³⁶ were prohibited (subject to the reasonable excuse defence) from leaving, or remaining away from, that local authority area.³⁷ Similarly, persons residing outside such areas were prohibited from entering or remaining there.³⁸

Notably, schedule 7A contained similar rules relating to travel to and from Scotland and elsewhere in the Common Travel Area – including other parts of the United Kingdom. This prompted media speculation over “roadblocks at the border”.³⁹ While concerns were raised regarding the practicability of enforcement,⁴⁰ several such charges were reported to the Procurator Fiscal⁴¹ and the restrictions’ mere existence may have had some deterrent effect.

An exhaustive account of each of the regulations cannot be attempted here. Their breadth has already been noted. At different times, these mandated the closure of retail premises, workplaces and other civic spaces, drastically limited lawful social activity, restricted travel and declared that everyone must ordinarily remain at home. Failure to heed these requirements, without reasonable excuse, rendered citizens open to criminal conviction.

Nearly every offence⁴² in the Covid-19 regulations contained a single defence in identical terms: “It is a defence...to show that the person, in the circumstances, had a reasonable excuse”.⁴³ Regulation 8(5) of the March 2020 regulations contained a non-exhaustive list of circumstances amounting to a reasonable excuse for the purposes of those regulations. Although this list applied to any of the offences in these regulations, it is clear from its terms

³⁶ For context: from 2 November 2020 to 16 May 2021, this was most (or all) of the country. Glasgow stayed in (at least) level 3 restrictions until 5 June 2021.

³⁷ Paragraph 13, Schedule 4 and Paragraph 14, Schedule 5 to the Local Levels regulations. The restrictions on leaving level 3 and 4 areas were omitted when the stay-at-home requirement was reimposed, and thereafter reinstated.

³⁸ Paragraph 14, Schedule 4 and Paragraph 15, Schedule 5 respectively.

³⁹ “Covid: Travel fine figures revealed by Police Scotland”, BBC News (27 November 2020) <<https://www.bbc.co.uk/news/uk-scotland-55104724>>.

⁴⁰ UK Covid-19 Inquiry, Module 2A-2C Report, Volume II, Chapter 13.69. <https://covid19.public-inquiry.uk/wp-content/uploads/2025/11/18102920/1435-HH-E03296643_UK-Covid-19-M2-V2-Inquiry_Volume-II_Accessible.pdf>.

⁴¹ See Chapter 4.4.5.

⁴² There were three exceptions to this, all relating to quarantine following international travel. These excluded the general defence, providing more limited reasons for non-compliance. These offences were: the International Travel regulations, regulations 9(1)(a),(ba),(bb),(c) and (d) and the Consolidated International Travel Regulations, regulations 31(1)(c) and 32(1)(a).

⁴³ One offence used a variation of this wording: the Public Health Information regulations, regulation 6(4). Another subsumed “without reasonable excuse” into the definition of the offence: the Consolidated International Travel regulations, regulation 30.

that it was most applicable to the stay-at-home requirement. That regulation 8(5) was revoked at the same time as regulation 5 lends weight to this interpretation.

As enacted, this listed the following reasons:

- To obtain money, basic necessities, or supplies for essential maintenance;
- To exercise, either alone or with members of the same household;
- To seek medical assistance;
- To provide care or assistance to a vulnerable person;
- To donate blood;
- To travel for work, voluntary or charitable services where impracticable to do so from home;
- To attend a funeral for a member of one's household, a close family member or (if no such persons are attending) a friend;
- To fulfil a legal obligation or participate in legal proceedings;
- To access critical public services;
- To continue contact arrangements for a child;
- For a religious leader, to go to their place of worship;
- To move house, where reasonably necessary; or
- To avoid injury, illness or to escape a risk of harm.

Two points can be noted immediately. The first is the apparent novelty of this formulation: providing a general defence and then a list of specific examples of circumstances which are deemed to amount to a reasonable excuse. Defences of “reasonableness” and “reasonable excuse” feature in other statutory offences,⁴⁴ and courts are accustomed to assessing these standards. However, it is less common for a statutory defence to include such guidance on reasons constituting the defence.⁴⁵

This had the benefit of providing a degree of clarity in what behaviour might be permitted (and would therefore not result in criminal liability), given the extreme breadth of the requirements in the March 2020 regulations. Presumably for this reason, this structure was

⁴⁴ See, for example, section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour), and section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 (having a bladed or sharply pointed article in a public place).

⁴⁵ Less common, but not unprecedented: for example, section 49(5) of the Criminal Law (Consolidation) (Scotland) Act 1995.

repeated in some later regulations – including the International Travel regulations⁴⁶ and some requirements of the Local Levels regulations, applying to “level 3” and “4” areas.

Secondly, while non-exhaustive, the very narrow scope of this list remains striking. This may have been used as a guide to interpreting the validity of other “excuses” which were advanced, by weighing their reasonableness against those listed. If so, then a provision intended to preclude liability in certain circumstances may have had the effect of encouraging a narrow reading of “reasonable excuse” – and thereby excluding other circumstances from the ambit of this defence.⁴⁷ In the absence of any research into how the regulations were interpreted by law enforcement actors, it is difficult to make this assessment.⁴⁸

This list was the subject of some (relatively limited) amendment, for two purposes: firstly, to provide further, specific reasonable excuses;⁴⁹ secondly, after the face covering requirement was inserted, to provide exemptions to this.

Neither the September 2020 regulations nor the Additional Temporary Measures regulations contained examples of reasonable excuses. These instead excluded specified circumstances from the ambit of certain requirements (such as public gatherings for work purposes).⁵⁰ By contrast, specific “examples of what constitutes a reasonable excuse” were contained in the Local Levels regulations: for entering or leaving a “level 3” area, a “level 4” area, or leaving (or remaining outwith) home. These overlapped considerably with the list in regulation 8(5) of the March 2020 regulations (as amended), prior to regulation 5 being revoked.

⁴⁶ For some, but not all of the offences – see footnote 42.

⁴⁷ See *Donnelly v HM Advocate* 2009 SCCR 512, in which the Sheriff directed the jury that the examples provided in section 49(5) (footnote 45) were the kind of exceptions which parliament had in mind as a “good reason”. The High Court described her directions as “entirely appropriate” and noted that she had not suggested that the circumstances had to be analogous. This interpretation would be consistent with the *ejusdem generis* principle of statutory interpretation: see D Bailey and L Norbury (eds), *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edition) (2020, LexisNexis), Chapter 23.2. However, Chapter 23.7 notes that there is a presumption against applying this principle where the specific examples follow the general words in a statute.

⁴⁸ In her statement to the UK Covid-19 Inquiry (at paragraph 27.1), Susan McVie observed that: “there is no detailed research on the way in which police officers interpreted the term ‘reasonable excuse’ during the pandemic.” <<https://covid19.public-inquiry.uk/wp-content/uploads/2024/01/24194650/INQ000369767.pdf>>.

⁴⁹ Most significantly: to include exercising with other households, attending places of worship, attending weddings and funerals, and forming an “extended household”. By 29 June 2020, this included using any business permitted to remain open (this reason did not feature in the equivalent provisions of the Local Levels regulations).

⁵⁰ The restriction on public gatherings in regulation 6 of the March 2020 regulations also contained an exhaustive list of exceptions. It is unclear why this was required (at least, before regulation 8(5) was revoked), given the overlap between these lists.

1.3.3 Obstructing relevant persons

Each of the main regulations contained two further offences. The first of these made it an offence to obstruct any person carrying out a function under the regulations. This included not only police constables, but other “relevant persons” designated by a local authority (albeit only in relation to restrictions and requirements imposed on listed businesses).

This general obstruction offence was not unusual in its terms. Section 90(2)(a) of the Police and Fire Reform (Scotland) Act 2012, for example, makes it an offence for a person to “resist, obstruct or hinder” *inter alia* a police constable. Similarly, section 1(1) of the Emergency Workers (Scotland) Act 2005 created an offence where a person “assaults, obstructs or hinders” specified emergency services personnel. Those offences carried higher maximum penalties (up to 12 months’ imprisonment) than the new offences created and would have applied to any circumstances involving obstruction of a police officer acting under the Covid-19 regulations.

This obstruction offence must be seen in the context of the sweeping powers which had been bestowed. These included a specific power to give directions, failure to comply with which was itself criminal (see Chapter 1.3.4). While stay-at-home requirements were in force, or where a person was suspected of gathering unlawfully, they could be directed to disperse, to return home, or removed there using reasonable force.

As gatherings in private dwellings became criminal, further powers were vested in police constables to enter private dwellings without a warrant, where they reasonably suspected that a “party” was taking place.⁵¹ This was later extended to allow relevant persons to enter any premises, where they reasonably suspected that an offence under the regulations was being committed.⁵²

These powers were considerable, and some at least do not appear to have been well-understood.⁵³ The potential for criminal liability was therefore significant.

⁵¹ The March 2020 regulations, regulation 6ZB; the September 2020 regulations, regulation 11; the Additional Temporary Measures regulations, regulation 22. “Party” was defined in the same way as the corresponding restrictions: a social gathering of 16 or more persons from more than one household, except for specified purposes.

⁵² The Local Levels regulations, regulation 6.

⁵³ During the research outlined in Chapter 4, numerous police reports quoted accused (or others present) as protesting that the police could not enter private dwellings without a warrant. This ignorance of the law may have contributed towards some accused then committing offences against the police.

This was qualified by the availability of the “reasonable excuse” defence, which was a novel aspect of these offences. The circumstances in which this defence might apply are not immediately obvious. This may have been intended to cover scenarios where a relevant person was acting *ultra vires*. However, in those circumstances, a relevant person could not be said to be “carrying out a function under the regulations”. It would therefore be unnecessary to found upon this defence. The decision in *McCallum v PF Edinburgh*,⁵⁴ in which the High Court quashed a conviction for assaulting police officers where the appellant had sought to resist the police’s unlawful entry to her home, appears to support this. This followed on from earlier authority, *Stocks v Hamilton*,⁵⁵ where a conviction for statutory police assault was quashed where the appellant had been unlawfully detained.

Alternatively, and more plausibly, this may have allowed a person to escape conviction where the exercise of these powers followed upon another alleged offence for which they had a reasonable excuse, and the extent of the obstruction was relatively minor. Given that the “primary” offences often involved an assessment of “reasonable excuse”, and therefore required relevant persons to exercise discretion rather than apply “black letter” legal rules, it is doubtful whether a good faith misjudgement by a relevant person – or one with which a court later disagreed – would mean that they were not carrying out a relevant function.

1.3.4 Contravening a direction, etc.

If the first set of offences relating to enforcement were unremarkable, the same cannot be said of the second. These criminalised contravening a direction, or failing to comply with a reasonable instruction or a prohibition notice given by a relevant person.

The effect of such “directions” was specified: to require a person to return home or to disperse gatherings. The scope of a “reasonable instruction” was potentially much broader: authorising relevant persons to give any reasonable instruction they considered necessary in exercise of their enforcement powers. Hickman expressed concern that the identical provision in England and Wales allowed relevant persons “to write the criminal law on the streets”.⁵⁶

⁵⁴ 2019 JC 125.

⁵⁵ 1991 SCCR 190.

⁵⁶ T Hickman, “Eight ways to reinforce and revise the lockdown law”, UK Constitutional Law Blog (16 April 2020) <<https://ukconstitutionallaw.org/2020/04/16/tom-hickman-eight-ways-to-reinforce-and-revise-the-lockdown-law/>>.

A prohibition notice could be issued by a relevant person if they reasonably believed that the subject was contravening a requirement, and that it was necessary and proportionate to give the notice for the purpose of preventing this from continuing. This is an example of what Chalmers and Leverick described as “two-stage construction of criminal liability”, in the context of other, “regulatory” offences applying to individuals acting in a special capacity.⁵⁷ This trend, they noted, had “received comparatively little attention” other than in the context of Anti-Social Behaviour Orders. They opined that, while such offences provide fair notice, there are potential issues relating to a lack of transparency and the potential for inconsistency.

In this regard, contraventions of directions and reasonable instructions can be distinguished from prohibition notices. Generally, one might expect the former to be given verbally by relevant persons. These two “stages” would therefore occur in quick succession. Given that the law changed frequently, and there is some anecdotal evidence that police officers sometimes struggled to keep abreast of these developments,⁵⁸ the risk of directions and instructions being made on a flawed basis may have been amplified.

This ought to be of less concern for prohibition notices, where relevant persons likely had more time to reach a decision. However, the other issues raised remain relevant.

1.4 General observations

1.4.1 Gaps in the criminal law?

While few would contend that the offences highlighted thus far were limited in scope, some specific omissions are striking. As noted above, meeting one person from another household in public was not criminalised during the first “lockdown”. Hosting a gathering in a dwelling was not specifically prohibited at first. While visitors would have contravened the stay-at-

⁵⁷ J Chalmers and F Leverick, “Quantifying Criminalization” in R A Duff et al (eds), *The Boundaries of the Criminal Law* (2010, OUP), pg.76

⁵⁸ Report of the Independent Advisory Group on the Police Use of Temporary Powers related to the Coronavirus Crisis (25 August 2021), Appendix B, paragraph 18. <<https://www.spa.police.uk/spa-media/1sqimlkv/rep-b-20210823-item-8-1-report-of-the-independent-advisory-group-on-police-use-of-temporary-powers-related-to-the-coronavirus-crisis.pdf>>

home requirement (when in force), the host would not have committed an offence under the regulations.⁵⁹

Except in the context of international travel, none of the Covid-19 regulations criminalised failing (or refusing) to quarantine following a positive test – or engaging in high-risk activity in that knowledge. Likewise, there was no specific requirement for individuals to quarantine while knowingly suffering from Covid-19 symptoms, or following close contact with an infected person, or on receiving notification to that effect from public health authorities.

This is subject to the caveat that Schedule 21 to the Coronavirus Act 2020 empowered public health officers to, *inter alia*, direct a potentially-infectious person to go to a place suitable for screening and assessment, require them to provide information about their travel history and recent contacts, to be screened and assessed, and (following assessment) require that person to remain in a specified place for up to 14 days – or otherwise restrict their movement, travel or activities.

Concerns were expressed by Liberty over the scope of the accompanying police power of detention, given that vast swathes of the population might be considered “potentially-infectious persons” during a pandemic.⁶⁰ This power was only somewhat qualified by the need to consult a public health officer beforehand “to the extent that it is practicable to do so”.

Paragraph 45 of this Schedule created multiple offences: providing false information; failing, without reasonable excuse, to comply with any such direction, reasonable instruction, requirement or restriction; obstructing an official; or absconding. These were punishable by up to 12 months’ imprisonment.

The important point is that these powers, and linked offences, were reactive. Public health guidance repeatedly emphasised these expectations, and yet this behaviour was not automatically criminal. Wider, less targeted measures were preferred.

This may have been justified in seeking to reduce the spread of Covid-19. Nevertheless, it meant that the most obviously reckless and negligent behaviour was not explicitly

⁵⁹ Later regulations (from 28 August 2020) made it an offence to “attend a party”, then (from the September 2020 regulations onwards) to “attend a gathering”, then to “participate in a gathering” (schedules 2-5, the Local Levels regulations) in a private dwelling.

⁶⁰ Transcript of UK Covid-19 Public Inquiry (Module 2 Hearings, 9 November 2023), pg.198-199 <<https://covid19.public-inquiry.uk/wp-content/uploads/2023/11/09194145/2023-11-08-Module-2-Day-21-Transcript.pdf>>.

criminalised. As will be shown, this did not prevent prosecutions for existing offences in circumstances where the regulations were silent.

1.4.2 Burden of proof

Most offences in Covid-19 regulations were subject to a defence for an accused person “to show” that, in the circumstances, they had a reasonable excuse. Whether these imposed evidential or legal burdens was not specified. There are no reported cases in Scotland on interpretation of the regulations.

In *Urquhart*,⁶¹ the High Court considered the statutory defence to a charge under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. Three factors were identified in assessing whether a legal burden is a justifiable interference with Convention rights: 1) the wording of the provision; 2) the behaviour prohibited; and 3) what justification can be made for a departure from the presumption of innocence, balancing the accused’s rights and the interests of the public.

At paragraph 21, the court opined that the wording used “‘to show’, not ‘to establish’ or ‘to prove’...supports the conclusion that the burden is an evidential one.” However, this factor is not necessarily decisive. Sections 47 to 49C of the Criminal Law (Consolidation) (Scotland) Act 1995 (offences involving carrying offensive weapons) contain defences in similar terms but impose legal burdens.⁶²

The court in *Urquhart* distinguished these offences based on the nature of the behaviour prohibited.⁶³ While Covid-19 offences must have been “enacted to deal with...activities involving a serious risk of physical harm”,⁶⁴ it is difficult to conclude that legal burdens can be justified. For some requirements in Covid-19 regulations – for example, wearing a face covering or staying at home – the reasons for non-compliance may be “so closely conditioned by an accused’s own knowledge and state of mind at the material time”⁶⁵ that an evidential burden would require the prosecution to prove facts peculiarly within the accused’s

⁶¹ *Urquhart v HM Advocate* 2016 JC 93.

⁶² *Donnelly v HM Advocate* 2009 SCCR 519; *Glancy v HM Advocate* 2012 SCCR 52.

⁶³ *Urquhart*, at [22].

⁶⁴ *Ibid.*

⁶⁵ *Sheldrake v Director of Public Prosecutions; Attorney General’s Reference (No.4 of 2002)* [2004] UKHL 43, at [41].

knowledge. However, not all requirements pose such difficulties. Restrictions on gatherings, for instance, would not: evidence of the surrounding circumstances would reveal a gathering's purpose in most cases.

In England, the High Court commented on this issue in *Leigh & others*,⁶⁶ stating that this is a matter to be proved by the prosecution.⁶⁷ Given important differences in drafting (the words “without reasonable excuse” featured in the definition of the relevant offence) and the framework articulated in *Urquhart*, this case is of limited assistance.

A separate point arising from *Leigh* is worth noting. In *Leigh*, the court found that the “reasonable excuse” defence must be read as permitting the exercise of rights under the European Convention on Human Rights. In those circumstances, to obtain a conviction the state must establish that conviction is a proportionate interference with those rights. This had broad implications for the interaction between the regulations and Convention rights.⁶⁸

1.4.3 Fixed Penalty Notices

Most of the Covid-19 regulations empowered police constables to issue FPNs.⁶⁹ This was a far more common means of enforcement than prosecution.⁷⁰

The “main” regulations all provided the same scale: £60 for the first notice (£30, if paid within 28 days), doubling with each notice thereafter up to a maximum of £960 (for a fifth notice). FPNs issued under previous regulations counted towards this total (excluding those relating to international travel).⁷¹

In November 2020, the Lord Advocate issued guidelines directing constables that FPNs should not be offered after a fourth notice.⁷² These guidelines instructed that FPNs should

⁶⁶ *Leigh & others v Commissioner for the Police of the Metropolis* [2022] EWHC 527.

⁶⁷ *Ibid*, at [93].

⁶⁸ At least in relation to protest cases. See Chapter 4.4.8.

⁶⁹ There were two exceptions: the Public Health Information regulations, and the Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021.

⁷⁰ See Chapter 4.2.1.

⁷¹ See, for example, regulation 7(6), the Local Levels regulations.

⁷² “Lord Advocate’s guidelines of the operation of the Fixed Penalty Notice Scheme under The Health Protection (Coronavirus) Regulations 2020”, COPFS website (1 November 2020) <<https://www.copfs.gov.uk/publications/lord-advocate-s-guidelines-coronavirus-fixed-penalty-notice-scheme/html/>>.

generally be issued for “minor offences”. However, officers retained discretion to take no action, give verbal warnings or issue Recorded Police Warnings.

The guidelines continued:

The word ‘minor’ cannot be precisely defined and assessing whether an offence is ‘minor’ will involve an 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.

This reflects an implicit view that criminalisation may be justified on harm-based grounds. I will examine that subject more closely, and consider whether this instruction (and therefore that outlook) was borne out by decision-making by prosecutors, in later chapters.

1.4.4 Maximum penalties

Paragraph 5(4), Schedule 19 to the Coronavirus Act 2020 specified the maximum sentences which could be imposed for offences created by regulations. This authorised the Scottish Ministers to create imprisonable offences: up to 12 months’ imprisonment on summary complaint, or two years on indictment.

Notwithstanding this, each of the offences in the main regulations were prosecutable summarily only. The maximum penalties were a fine not exceeding the statutory maximum. That this amount was set at £10,000⁷³ ought to dispel any perception that these were, by design, very minor offences which would necessarily attract small penalties. Whilst these offences were non-imprisonable, there was nothing inherent to these regulations preventing strict enforcement action, and large financial penalties being imposed by the courts. Police and prosecutorial discretion played an important role here and will be explored in Chapter 4.

⁷³ The Criminal Procedure (Scotland) Act 1995, section 225(8).

This concern over the maximum available penalties should not be overstated, nor should it detract from the more fundamental point that criminal conviction itself is significant. This is “the strongest form of condemnation...that the state can muster”.⁷⁴

As noted in Chapter 4.2.1, the vast majority of “interventions” by Police Scotland resulted in no formal action being taken. A relatively small proportion involved FPNs being issued, and a smaller percentage still resulted in a report to the Procurator Fiscal. In relative terms, criminal prosecution was exceptional.

Regardless, a less quantifiable but hugely significant consequence of these offences is the effect that their existence is likely to have had on the behaviour of law-abiding citizens: drastically narrowing their freedom of action, by threatening conviction and punishment for their non-compliance. This might always be seen as one of the fundamental justifications for criminalisation. In posing the question, “why are certain kinds of action forbidden by law and so made crimes or offences?”, Hart answered: “to announce to society that these actions are not to be done and to secure that fewer of them are done.”⁷⁵

Given evidence that there was (at least, during earlier stages of the pandemic) widespread compliance, these exhortations gain particular importance – regardless of the extent of enforcement. The principled basis for this use of the criminal law is the question to which I will now turn.

⁷⁴ A Ashworth and L Zedner, “Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure and Sanctions” (2008) 2 *Criminal Law and Philosophy* (2008) 21, pg.48

⁷⁵ H L A Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd edition) (2008, OUP), pg.6.

Chapter 2 – Normative theories of criminalisation

2.1. Introduction

A widespread political consensus accompanied the imposition of lockdown measures across the UK. Alongside a lack of political opposition (beyond the fringes), there was an absence of academic commentary by criminal lawyers and theorists on the offences introduced. This massive expansion in the criminal law has not only met with little critique: from a criminal law perspective, it has barely been discussed.⁷⁶

This might be explained by a popular conviction that the emergency regulations were justified.⁷⁷ Nevertheless, given the voluminous academic literature on the proper scope and limits of the criminal law, this feels like a significant omission. The principled case for criminalisation has perhaps been alluded to (in ministerial statements and other publications),⁷⁸ but it is not clear that it has ever been fully articulated.

Normative theories of criminalisation may provide some insight. This chapter seeks to explore influential theories of this kind: legal-philosophical work focusing on the underlying principles which ought to guide legislators in deciding what conduct should, or should not, be criminal. These can offer a framework for examining criminalisation in the context of Covid-19: by providing a normative basis for analysing whether, and how, these offences might be justified, and therefore against which to review how they were used in practice. Analysing these theories in the context of the Covid-19 regulations will demonstrate that the content of the offences (and defences) could have been significantly altered by applying different models of criminalisation.

⁷⁶ See footnote 10 for academic commentary from other perspectives.

⁷⁷ “Over half of Britons believe the Government was too slow to enforce lockdown”, Ipsos Mori (2 April 2020) <<https://www.ipsos.com/en-uk/over-half-britons-believe-government-was-too-slow-enforce-lockdown>>; “Four in five Scots say Nicola Sturgeon has handled the coronavirus outbreak well”, Ipsos Mori (26 May 2020) <<https://www.ipsos.com/en-uk/four-five-scots-say-nicola-sturgeon-has-handled-coronavirus-outbreak-well>>; “Majority of Britons support extending certain COVID-19 restrictions, but not forever”, Ipsos Mori (8 July 2021) <<https://www.ipsos.com/en-uk/majority-britons-support-extending-certain-covid-19-restrictions-not-forever>>; “Half of Britons believe measures to control coronavirus over Christmas were about right”, Ipsos Mori (18 January 2022) <<https://www.ipsos.com/en-uk/half-britons-believe-measures-control-coronavirus-over-christmas-were-about-right>>.

⁷⁸ See Chapters 2.3.3 and 2.4.3.

This discussion will focus on theories centring on “harms” and “wrongs” – these being most influential, and plausible in this context. Two main arguments will emerge.

Firstly, that individual harm was secondary to collective interests in motivating this response. Whilst this theoretical perspective best fits with government communications and public attitudes towards Covid-19 restrictions, the idea of collective harms has been thinly sketched by those theorists who have engaged with this and therefore offers little guidance on the proper limits of the criminal law. Secondly, although wrongfulness played no meaningful part in the state resorting to criminal law, this became part of these offences’ popular justification and character.

2.2 Cautionary notes

Some cautionary notes are required at this stage. These relate to the scope of this study, and to some possible issues raised.

The first is that I am not seeking to demonstrate the validity of any theoretical approach. A single category of offences might challenge a certain framing but is probably too narrow a lens through which to assess justifying principles across the whole sphere of criminal law. My objective is not to identify the “correct” answer to this mammoth problem.

Indeed, some have suggested that approaches towards criminal law concerned with identifying a “master principle” or principles are misconceived,⁷⁹ pointing towards a “dizzying variety of questions that a complete theory of criminalisation would need to address”.⁸⁰ These include: the distinctive role of criminal law; its relationship to other areas of law; the question of universality across different societies; the influence of history in a particular system; and the wider political theory within which the ideal criminal law is situated.⁸¹ There is, nonetheless, an acceptance that such theories can act as “non-exclusive signposts”⁸² in identifying and defining relevant principles: that these might at least provide

⁷⁹ R A Duff, L Farmer, S E Marshall, M Renzo and V Tadros, “Introduction – Towards a Theory of Criminalization?” in R A Duff et al (eds), *Criminalization: The Political Morality of the Criminal Law* (2014, OUP). See also Duff, *Answering for Crime*, pg.138-143 and L Farmer, “Criminal Wrongs in Historical Perspective” in R A Duff et al (eds), *The Boundaries of the Criminal Law* (2010), pg.217-226.

⁸⁰ J Edwards, “Master Principles of Criminalisation” (2016) 7 *Jurisprudence* 138.

⁸¹ Duff, Farmer, Marshall, Renzo and Tadros (footnote 79).

⁸² *Ibid*, pg.45.

guidance in determining whether certain types of behaviour ought to be criminal, and the proper scope and nature of any offences.

A separate issue is whether the whole range of Covid-19 offences outlined, spanning two years, can be analysed collectively, without eliding important differences in detail and context. The analysis in this chapter largely proceeds on that assumption – given the broader, shared circumstances (and owing to limitations of space). The same problem arises in respect of existing offences adapted to this new context.

One might also ask whether the basis for introducing Covid-19 offences was the same as the reasons for enforcement by police (and other relevant persons), or for prosecution in court – often many months later.⁸³ A satisfactory answer to this question may or may not be possible, but the distinction must be acknowledged. While this chapter is concerned primarily with “formal criminalisation” (the law in the books), Chapters 3 and 4 also seek to analyse “substantive criminalisation” (the law in action).

A final and more fundamental challenge is the exceptional nature of the Covid-19 crisis. Can “ordinary” criminal law principles be applied to emergency circumstances? Should allowances be made for suspension of or derogation from these norms?⁸⁴ These are big questions, examination of which is beyond the scope of this work. The only observation to make is that abandonment of an important principle in response to a crisis might tend to call into question either the usefulness of that principle or the strength of our commitment to it.

Having recorded these caveats, I now turn to consider normative theories. Given the substantial dangers of Covid-19 which were constantly reiterated through public messaging, the idea of “harm” is a natural starting point.

⁸³ Time limits applied to every offence in Covid-19 regulations, requiring that proceedings be commenced within 12 months of the contravention – section 136, the Criminal Procedure (Scotland) Act 1995, as amended by Coronavirus legislation. However, court business was heavily reduced between 2020 and 2022. See: “Criminal courts backlog”, Audit Scotland (May 2023), pg.9-10.

https://audit.scot/uploads/docs/report/2023/nr_230525_criminal_courts_backlog.pdf.

⁸⁴ This possibility is hinted at by R A Duff in *The Realm of Criminal Law* (2018, OUP), pg.261 (footnote 117) (“Duff, *The Realm of Criminal Law*”). See also A von Hirsch, “Extending the Harm Principle: ‘Remote’ Harms and Fair Imputation” in A P Simester and A T H Smith (eds), *Harm and Culpability* (1996, OUP), pg.13.

2.3 The harm principle

2.3.1 Mill's harm principle

John Stuart Mill's classic formulation of "the harm principle" represents the best known and most influential example of this type of approach towards criminalisation. Mill famously asserted: "that the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others."⁸⁵ While Mill's focus was not solely on state interference through criminalisation, this maxim has held an enduring appeal amongst criminal law scholars in seeking to limit state-sanctioned punishment.⁸⁶

However, closer reading reveals the breadth of Mill's principle. The first point to note is that legislation may be justified *to prevent harm to others*. This does not exclude prohibiting activities which are not themselves harmful in the wider interest of reducing the overall incidence of harm. Depending on the stage at which the state is entitled to intervene to prevent harm (on which Mill was silent), a very wide range of conduct might be criminalised under the harm principle.

Compounding this, Mill offered no definition of his central concept. A range of "harms" can be identified, of different natures and varying severity and permanence. The scope of the resulting criminal law could be radically altered by excluding some such harms.

2.3.2 Feinberg's harm principle

Joel Feinberg's work represents the most influential attempt to refine the harm principle, to reduce the potential elasticity inherent in an undefined concept of "harm". He argued that "the harm and offense principles, duly clarified and qualified, between them exhaust the class of good reasons for criminal prohibitions".⁸⁷ His version of the principle was framed in positive terms: "it is always a good reason in support of penal legislation that it would probably be effective at preventing (eliminating, reducing) harm to persons other than the

⁸⁵ J S Mill, *On Liberty* (people's edition) (1884, Longman's, Green & Co), pg.6.

⁸⁶ For example, J Feinberg, *The Moral Limits of the Criminal Law: Harm to Others* (1987, OUP) ("Feinberg, *Harm to Others*"), D Husak, *Overcriminalization: The Limits of the Criminal Law* (2007, OUP) ("Husak, *Overcriminalization*"), A P Simester and A von Hirsch, *Crimes, Harms and Wrongs: On the Principles of Criminalisation* (2011, Hart) ("*Crimes, Harms and Wrongs*").

⁸⁷ Feinberg, *Harm to Others*, pg.26. He later qualified this position in *The Moral Limits of the Criminal Law: Harmless Wrongdoing* (1990, OUP), pg.321-324.

actor”. A significant qualification followed: there must be “no other means that is equally effective at no greater cost to other values”.⁸⁸

Feinberg conceptualised “harms” as “setbacks to interests”. Fleeting or trivial bad experiences, or mere offence, would not qualify as harms.⁸⁹ The law, he argued, should be concerned only with setbacks to individuals’ “welfare interests”: the basic requirements which ground one’s loftier aspirations.⁹⁰

As Feinberg’s theory mainly focuses on harm to individuals, I will briefly consider individual harms as a basis for criminalisation before later discussing collective harms. The most common symptoms of Covid-19 were a sore throat, fever and chills which, for most, subsided without any treatment.⁹¹ Such consequences, while usually short-lived, were not trivial. Mild illness can be more debilitating than minor injury. Assaults occasioning minor (or no) injury are frequently prosecuted.⁹² One rationale for this is the potential for greater harm. In this regard, it is important that Feinberg’s harm principle does not require actual (or the worst possible) harm in every instance. Nevertheless, the likelihood of mild symptoms, and of the most serious individual harms (severe illness and death) occurring were relevant factors – alongside the scientific uncertainty at the outset of the pandemic – in deciding whether to criminalise.

For Feinberg, preventing harmful consequences was not sufficient for criminalisation. His definition of harm required a wrongful act or omission: said “wrong” being constituted by a violation of another person’s moral rights (their legitimate interests).⁹³ Put simply: “only setbacks of interests that are wrongs, and wrongs that are setbacks to interest, are to count as harms in the appropriate sense”.⁹⁴ “Harm” was therefore “a very complex concept with hidden normative dimensions”.⁹⁵

Notwithstanding this, Feinberg conceded that other values external to harm were required. He therefore sought to supplement his theory with a series of “mediating maxims” to guide

⁸⁸ Feinberg, *Harm to Others*, pg.26. On the related idea of “criminalisation as a last resort”: N Jareborg, “Criminalization as a Last Resort (Ultima Ratio)” (2005) *Ohio State Journal of Criminal Law* 521.

⁸⁹ Feinberg (footnote 88), pg.45-46.

⁹⁰ *Ibid*, pg.37-38. Feinberg also recognised harm to certain public interests – see Chapter 2.3.3 below.

⁹¹ “Coronavirus disease (COVID-19)”, World Health Organisation website (9 August 2023) <[https://www.who.int/news-room/fact-sheets/detail/coronavirus-disease-\(covid-19\)](https://www.who.int/news-room/fact-sheets/detail/coronavirus-disease-(covid-19))>.

⁹² “Recorded Crime in Scotland, 2023-24”, Scottish Government website (25 June 2024) <<https://www.gov.scot/publications/recorded-crime-scotland-2023-24/pages/5/>>.

⁹³ Feinberg, *Harm to Others*, Chapter 3.

⁹⁴ *Ibid*, pg.36.

⁹⁵ *Ibid*, pg.214.

legislative decisions.⁹⁶ The following of these (briefly summarised) may be relevant to assessing Covid-19 harms as a basis for criminalisation:

1. Consent to harm, or voluntary assumption of risk, negates any wrongfulness.⁹⁷
2. Where conduct carries a risk, but not a certainty, of harm, legislators should consider various factors: the gravity of the potential harm; its probability; the social value of the conduct; and the reasonableness of adopting the risk.⁹⁸
3. Society cannot use the criminal law to suspend usually harmless activities to protect individuals with “rare vulnerabilities to harm”.⁹⁹ Those with “abnormally low susceptibilities to injury are to be given the same protection...as persons of normal vulnerability”.¹⁰⁰ Feinberg gives the colourful example of banning table salt to protect those with an exceptionally rare and serious allergy.¹⁰¹
4. Where interests conflict, legislators must consider which interest is more important, having regard to their centrality to the individual or group, their relationship with other interests and their inherent moral quality.¹⁰²
5. Intervention with liberty is itself harmful, and often counterproductive. More restrictive legislation therefore requires weightier justification.

The first and third of these considerations can briefly be explored here, given their relevance to individual harm. On Feinberg’s approach, the remainder are considered only after the relevant harm has been identified.

Implied consent to the risk of infection from minor illnesses during everyday activities has been raised in discussions of criminalisation of HIV transmission.¹⁰³ Like Feinberg, Laird

⁹⁶ Ibid. These are summarised at pg.215-217 and 243-245.

⁹⁷ Ibid, pg.35-36 and 115-117.

⁹⁸ Ibid, pg.188-192. Von Hirsch calls this “the standard harms analysis” (see Chapter 2.3.4 below).

⁹⁹ Ibid, pg.216-217.

¹⁰⁰ Ibid.

¹⁰¹ Ibid, pg.192-193.

¹⁰² Ibid, pg.202-206.

¹⁰³ K Laird, “Criminalising Contagion – Questioning the Paradigm” in H Quirk and C Stanton (eds) et al, *Criminalising Contagion: Legal and Ethical Challenges of Disease Transmission and Criminal Law* (2016, CUP), pg.217-220. J Chalmers, “Sexually Transmitted Diseases and the Criminal Law” (2001) 5 *Juridical Review* 259, pg.273-274 (“Chalmers, ‘STDs and the Criminal Law’”).

identifies the social usefulness of the conduct and the reasonableness of the risk as significant factors.¹⁰⁴ The example Laird uses is boarding a bus while suffering from the common cold. These calculations are no doubt different during a pandemic than in ordinary circumstances. Conversely, Mawhinney argues that reckless transmission of any communicable disease should be criminal, rejecting a consent defence on the usual public policy grounds applicable to crimes of violence.¹⁰⁵ Whether or not the most dangerous activities risking transmission of Covid-19 warranted criminalisation, it is difficult to accept that consent was completely irrelevant. The example of individuals attending large gatherings and themselves becoming infected is instructive. However, the danger to the wider community remains relevant, given the difficulty in controlling onward transmission without quarantining (by contrast with sexually transmitted infections). The role of consent is discussed further at Chapter 3.3.3 below.

On the third maxim, without suggesting that the risks from Covid-19 were confined to a vulnerable minority, there was a strong correlation between age and mortality. As of March 2023, 87.9% of deaths in Scotland where Covid-19 was listed on the death certificate were amongst those aged 65 or older; 70.72% were aged 75 or older.¹⁰⁶ As of 2022, those aged 65 or older comprised 20.1% of the population.¹⁰⁷ While some distance from Feinberg's example, the risk posed to different groups by Covid-19 was markedly different – and well understood before the first “lockdown”.¹⁰⁸ This being so, it is doubtful whether lockdown measures, addressed to the entire population, would have been imposed solely in anticipation of individual harms. Applying the type of calculus envisaged by Feinberg's second maxim, the strictest measures may have been considered a disproportionate response to those dangers alone. Individual harms provided a reason for some criminalisation, but this was not the decisive basis for the drastic measures taken. Instead, as I argue below, the relevant harm grounding criminalisation was to collective interests.

¹⁰⁴ Laird (footnote 103).

¹⁰⁵ G Mawhinney, “To Be Ill or To Kill: The Criminality of Contagion” (2013) 77 *The Journal of Criminal Law* 202.

¹⁰⁶ “Deaths involving coronavirus (COVID-19) in Scotland”, publication: “weekly deaths by location, age groups, sex and cause, 2020-2023” (9 March 2023), National Records of Scotland website (archive), <<https://webarchive.nrscotland.gov.uk/20240926181057/https://www.nrscotland.gov.uk/covid19stats>>.

¹⁰⁷ “Scotland's Census 2022 – rounded population estimates”, Scotland's Census website (14 September 2023) <<https://www.scotlandscensus.gov.uk/2022-results/scotlands-census-2022-rounded-population-estimates/>>.

¹⁰⁸ Italy's demographics were often used to explain its death toll. See, for example: “Coronavirus: how do Italy and the UK compare?”, *The Guardian* (23 March 2020) <<https://www.theguardian.com/world/2020/mar/23/coronavirus-how-do-italy-and-the-uk-compare>>.

The issues raised by these maxims (numbers two to four especially) are fiercely contested and cannot be resolved here. It is sufficient to observe that these problems cannot be resolved by reference to the harm principle alone.

Limitations of space preclude fuller examination of Feinberg's nuanced theory, including of each of these maxims on their own terms. For his part, Feinberg ultimately downplayed their significance: submitting that they were essential to give substance to the harm principle, but their specific content might reasonably vary.¹⁰⁹ Given Feinberg's concessions that his principle cannot itself resolve difficult questions of criminalisation¹¹⁰ – acknowledging the “gaping uncertainties” left by a “nearly vacuous guiding principle”¹¹¹ – one might wonder whether this is simply deferring the problem.

For similar reasons, Harcourt observed that “the harm principle is effectively collapsing under the weight of its own success”.¹¹² He noted that in debates over regulation and prohibition arguments from morality have been replaced by claims about harm. In this way, a liberal principle intended to prevent excessive state intervention was regularly being deployed by social conservatives to expand the criminal law.¹¹³

Moreover, once a threshold of harm is met, the principle offers no guidance in choosing between competing harms: in quantifying these and assessing the relative importance of the values or interests threatened. This is apparent in the balance of harms involved in the decision to enter “lockdown”, including isolation and disruption of support services for vulnerable groups,¹¹⁴ the economic impact, and the effect of school closures.¹¹⁵

¹⁰⁹ *Harm to Others*, pg.245.

¹¹⁰ *Ibid*, pg.187-188 and 214-215.

¹¹¹ *Ibid*, pg.188.

¹¹² B Harcourt, “The Collapse of the Harm Principle”, (1999) 90 *Journal of Criminal Law and Criminology* 109, pg.113.

¹¹³ *Ibid*, pg.110.

¹¹⁴ S Armstrong and L Pickering, “Left Out and Locked Down: Impacts of Covid-19 Lockdown for Marginalised Groups in Scotland”, Executive Summary (17 December 2020) <https://scotlandinlockdown.co.uk/wp-content/uploads/2020/12/scotlock_project_report_executive-summary_dec2020-2.pdf>.

¹¹⁵ The Scottish Government acknowledged various such harms in the “Route Map” published in May 2020. Footnote 17, pg.12-14.

2.3.3 Public accumulative harms

Recognising collective interests of this kind is essential to understanding the criminal law response to a public health crisis. A harm-based view of criminalisation, focused purely on individuals, which paid no account of the existence of broader social harms would be inadequate.

Farmer suggests that this is a common deficiency in theories of criminalisation concerned with harms, wrongs (or other organising principles): that this outlook “takes wrongs about individuals as fundamental and accordingly struggles to explain collective or welfare interests”.¹¹⁶

The threat posed by transmission of a novel virus to each citizen is an obvious starting point in contemplating criminalisation. However, in responding to Covid-19, this was rarely the only danger which was emphasised. In announcing “lockdown” measures on 23 March 2020, the First Minister explained that these were “necessary for us to slow down what is now becoming a rapid acceleration of this virus...[and] in order to reduce the peak of the number of people infected and we need to do that to prevent our National Health Service being overwhelmed...This is, and I can’t say this strongly enough, this is about saving lives.”¹¹⁷

Though the eventual harm was expressed as being to individual interests, this was by means of a shared (and growing) threat to a collective institution protecting those interests. This, and subsequent statements, justified restrictions by reference to the rate of transmission.¹¹⁸ This could be seen in the First Minister’s exhortation to “slow the spread of the virus, protect the NHS, and save lives”.¹¹⁹ This appeal to “protect the NHS” (by slowing transmission) would have been understood as preventing critical care capacity from being exceeded by an uncontrollable epidemic.¹²⁰

¹¹⁶ L Farmer, “Criminal Law as an Institution: Rethinking Theoretical Approaches to Criminalization” in R A Duff et al (eds), *Criminalization: The Political Morality of the Criminal Law* (2014), pg.80.

¹¹⁷ Footnote 8.

¹¹⁸ For example: “Coronavirus (COVID-19) update: First Minister’s speech 28 May 2020”, Scottish Government website (28 May 2020) <<https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-28-2020/>>. See also: “Coronavirus (COVID-19) update: First Minister’s speech 14 September 2020”, Scottish Government website (14 September 2020) <<https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-14-september-2020/>>.

¹¹⁹ “Coronavirus (COVID-19) update: First Minister’s speech 26 May 2020”, Scottish Government website <<https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-speech-26-2020/>>.

¹²⁰ Important context here is the Imperial College London modelling, often credited with influencing the UK Government’s decision to enter “lockdown”. “COVID-19: Imperial researchers model likely impact of public health measures”, Imperial College London website (17 March 2020) <<https://www.imperial.ac.uk/news/196234/covid-19-imperial-researchers-model-likely-impact/>>. This article

The Scottish Government’s blueprint for easing “lockdown” measures, published in May 2020, struck a familiar chord: “The Scottish Government is doing everything it can to suppress the virus and will not change restrictions until it is safe to do so. A second surge in infection would cause further harm to our health, society and economy.”¹²¹

This continued: “The restrictions that have been imposed have been extensive but necessary in order to bring down transmission”.¹²² This was echoed in the later Strategic Framework, which read: “The Scottish Government...is committed to suppressing the virus to the lowest possible level, and keeping it there, until we have a vaccine and/or effective treatments.”¹²³

These pointed towards two separate-but-related goals of harm prevention: reducing transmission to avert the worst-case scenario (and, relatedly, to minimise deaths) but also seeking to delay this until a (medical) solution could be found. The supporting evidence published by the Scottish Government for moving to different “phases” (easing restrictions) either referred solely to the infection rate¹²⁴ or World Health Organisation criteria, which featured transmission and healthcare capacity prominently.¹²⁵

The Strategic Framework identified “four harms” caused by Covid-19: to individuals; to health and care services; to society; and to the economy.¹²⁶ The first two were the most frequently cited in support of intervention, the latter being recognised as consequences of the measures themselves.¹²⁷

mentions its influence: “Neil Ferguson: UK coronavirus adviser resigns after breaking lockdown rules”, The Guardian (5 May 2020) <<https://www.theguardian.com/uk-news/2020/may/05/uk-coronavirus-adviser-prof-neil-ferguson-resigns-after-breaking-lockdown-rules>>.

¹²¹ Footnote 17, pg.6.

¹²² Ibid.

¹²³ “COVID-19: Scotland’s Strategic Framework”, (30 October 2020), pg.3 <<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/10/covid-19-scotlands-strategic-framework/documents/covid-19-scotlands-strategic-framework/covid-19-scotlands-strategic-framework/govscot%3Adocument/covid-19-scotlands-strategic-framework.pdf>>.

¹²⁴ “Coronavirus (COVID-19) Phase 1: supporting evidence for moving to phase 1 of Scotland’s route map”, Scottish Government website (29 May 2020) <<https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis-supporting-evidence-moving-phase-1/pages/1/>>.

¹²⁵ “Coronavirus (COVID-19) Phase 2: supporting evidence for moving to phase 2 of Scotland’s route map”, Scottish Government website (19 June 2020) <<https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis-supporting-evidence-moving-phase-2/pages/1/>>. “Coronavirus (COVID-19): Scotland’s route map – supporting evidence for moving to Phase 3”, Scottish Government website (14 July 2020) <<https://www.gov.scot/publications/covid-19-framework-decision-making-scotlands-route-map-through-out-crisis-supporting-evidence-moving-phase-3/pages/1/>>.

¹²⁶ Footnote 123, pg.17-18.

¹²⁷ Ibid.

Similarly, the preambles to nearly all of the Scottish Covid-19 regulations were in identical terms, which emphasised threats to public goods:

These Regulations are made in response to the *serious and imminent threat to **public health*** which is posed by the incidence and spread of coronavirus in Scotland.

The Scottish Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is ***a public health response to that threat.***¹²⁸

Individual harm is therefore inadequate to explain the reasoning advanced for Covid-19 legislation. Feinberg's treatment of "public accumulative harms" might provide an appropriate conception of harm for these purposes.¹²⁹ In contrast with the classic scenario where harm is a direct and more-or-less immediate consequence of the actor's (intentional or reckless) conduct,¹³⁰ the effect of individual contributions might not be immediate or even quantifiable. Each instance may cause little or no harm but the net effect of the behaviour, if widely practiced, threatens to setback a common interest. In some circumstances, where only civic-minded restraint prevented such harm, fairness might even demand criminalisation.¹³¹

The example developed by Feinberg was environmental harms – to shared interests in clean air and water caused by pollution.¹³² Similarly, public health (including maintaining a functioning health service) undoubtedly qualifies as a common, national interest – one which gained special urgency during the pandemic, given the grim backdrop of daily hospital admission updates, and the spectre of exponential growth in transmission.¹³³

In urging caution before resorting to the use of criminal law, Feinberg noted the complexities involved in regulation of activities causing pollution. The primary issue revealed is in attributing blame ("imputation") to individual contributors, especially with many contributors over a longer period. This is particularly difficult where most instances of the activity generate some public utility. In such areas, a range of interests must be considered, including comparing disparate activities. This type of task is not well-suited to blanket prohibitions

¹²⁸ Emphasis added. The exceptions to this were the August 2021 regulations, the International Travel regulations and the Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021.

¹²⁹ Feinberg, *Harm to Others*, Chapter 6.

¹³⁰ Von Hirsch describes these as "individual, victimising harms" (footnote 84).

¹³¹ Feinberg, *Harm to Others*, pg.226-227. The example used is tax evasion.

¹³² Ibid, pg.227-232.

¹³³ See footnotes 119 and 120.

enacted by legislators. Instead, he proposed that this should be governed by regulatory bodies issuing licenses – breach of which would constitute a criminal offence, to enable effective enforcement. This would enable clearer imputation for agents’ own contributions to an accumulative harm. The behaviour would therefore be wrongful in violation of this authoritative scheme.

There is nothing in Feinberg’s account which would necessarily preclude some broadly framed offences for particularly harmful acts with little social value. Understandably, this is not the focus of his discussion. Resolving difficult problems of this type through alternatives to blunt criminal prohibitions has been commended by other theorists.¹³⁴ Feinberg’s approach centres on agents acting in special capacities, undertaking specialised activities. This is undoubtedly impracticable when the activities concerned are practiced by the entire population.

Likewise, Feinberg assumes that the model legislator devising such (non-criminal) regulations – and presumably the regulators enforcing them – does so in possession of a wealth of relevant and robust information.¹³⁵ This is an unrealistic prospect in a rapidly developing crisis where delay is potentially disastrous. Therefore, while Covid-19 fits his definition of a public accumulative harm, the response goes far beyond what was envisaged by Feinberg as a proportionate exercise of the harm principle.

In this respect, Feinberg makes an exception for “public welfare offences”¹³⁶ because an offence of this sort (if it is non-imprisonable) “lacks the reprobative symbolism of genuine punishment” and is therefore not truly criminal.¹³⁷ Despite their low penalties, few would say this of the Covid-19 regulations, given their effect on individual liberty; and the threat of enforcement by police. Whether these were truly free of moral disapprobation is a question to which I will return.

¹³⁴ D Husak, “The Nature and Justifiability of Nonconsummate Offences” in D Husak, *The Philosophy of Criminal Law: Selected Essays* (2010, OUP), pg.127 (footnote 45) and 144 (footnote 109). See also V Tadros, “Criminalization and Regulation” in R A Duff et al (eds), *The Boundaries of the Criminal Law* (2010), pg.180.

¹³⁵ Feinberg, *Harm to Others*, pg.226 and 244.

¹³⁶ These are “regulatory” special capacity offences, typically punishable by fines and requiring no proof of *mens rea*. See F B Sayre, “Public Welfare Offences” (1933) 3 Columbia LR 55.

¹³⁷ Feinberg, *Harm to Others*, pg.242. A formal distinction between “regulatory offences” and more serious criminal offences has been proposed by other writers. See the discussion in R A Duff, “Perversions and Subversions of Criminal Law” in R A Duff (ed) et al, *The Boundaries of the Criminal Law* (2010). By contrast, Husak calls this an “evasion” – see footnote 159.

Given the scale of the harm threatened – and assuming that no other means could have been equally effective at reducing this¹³⁸ – we might ask whether criminalisation can so easily be ruled out. Otherwise, the usefulness of harm as a conceptual starting point would be undermined. However, Feinberg’s approach provides little guidance in assessing what behaviour might be made criminal, and what shape any offences might take, in response to severe public accumulative harms.

2.3.4 Fair imputation and other limiting principles

Other writers have noted the problems raised by accumulative harms in attributing blame to each actor. Von Hirsch argues that, while Feinberg acknowledged the problem, the structure of his analysis was insufficient to address this.¹³⁹ This analysis took the form of the second mediating maxim summarised above, with a final step (in deciding whether criminalisation is appropriate) enabling “side constraints” (external principles) to be respected. The fundamental objection, according to von Hirsch, is that this does not permit a more principled basis for opposing criminalisation of remote harms: that the ultimate outcome is not the responsibility of the actor.¹⁴⁰ Weighing the gravity and likelihood of harm against the value of the conduct and degree of intrusion involved in prohibition can be useful analytically, but is missing the “normative link” allowing consideration of whether blame can truly be ascribed to individuals for the remote consequences of their (and others’) actions.¹⁴¹

For this reason, while accepting that remote harms can underlie criminal prohibitions for specialist activities, von Hirsch proposes a requirement that such offences addressed to the general public should be confined to “obviously reprehensible” behaviour.¹⁴² It is difficult to assess which Covid-19 restrictions (if any) could meet this high threshold. Large gatherings which risked becoming “super-spreader events” at the height of the pandemic might qualify. Refusal to self-isolate following a positive Covid-19 test, while risking contact with others, might also – though, as noted in Chapter 1.4.1, this was never specifically prohibited under the regulations. Those hosting or attending small gatherings might not qualify, regardless of

¹³⁸ See the Imperial College London modelling (footnote 120).

¹³⁹ Von Hirsch (footnote 84).

¹⁴⁰ Ibid, pg.274.

¹⁴¹ Ibid, pg.269 (footnote 25).

¹⁴² Ibid, pg.273.

whether these were a more common or significant contributor towards the accumulative harm.

“Lockdown” involved a complete shift in social behaviour, with public expectations developing in response.¹⁴³ However, it does not follow that contravening any legal regulation was “reprehensible”. Judging the extent to which (previously normal) behaviour defied these norms would be an extremely difficult task for legislators. This requirement can therefore be rejected as too onerous while still accepting the importance of assessing imputation.

Similarly, Husak suggests that identifying the extent to which conduct risking harm ought to be criminal is “perhaps the most difficult topic” for criminal theorists.¹⁴⁴ Special problems attend behaviour which is not harmful on each occasion it is performed, as some individuals will be penalised without any culpability for the harm justifying criminalisation.¹⁴⁵

Husak proposes five principles to attempt to constrain such “nonconsummate” offences.¹⁴⁶ Three of these are relatively unproblematic. Applied to this context, those are: that intentionally transmitting or exposing others to Covid-19 ought to be criminal;¹⁴⁷ that the activities prohibited contributed towards transmission and that severe consequences might ensue, if widely practiced; and that abandonment of the relevant action could form a defence.¹⁴⁸ The remaining two principles merit further discussion.

The first is a “high culpability requirement”: that the *mens rea* of the offence should require a high degree of culpability for the ultimate harm. Husak does not specify the appropriate mental state short of intention, though seems to suggest that at least recklessness should be required.¹⁴⁹

There is no elaboration of this in the context of accumulative harms, which feature minimally in his discussion. Nevertheless, applying this could have radically curtailed liability for

¹⁴³ See Chapters 2.4.2 to 2.4.3.

¹⁴⁴ D Husak, “Convergent Ends, Divergent Means: A Response to My Critics” (2009) 28 *Criminal Justice Ethics* 119, pg.131

¹⁴⁵ D Husak, “The Nature and Justifiability of Nonconsummate Offences” in D Husak, *The Philosophy of Criminal Law: Selected Essays* (2010). Von Hirsch uses the term “abstract endangerment” (footnote 84, pg.263-264). Feinberg labels these “aggregative harms”: *Harm to Others*, pg.193-198.

¹⁴⁶ Husak (footnote 145), pg.137-141.

¹⁴⁷ At least in principle. There would likely be insurmountable practical difficulties, in cases of actual transmission, in establishing the source of infection.

¹⁴⁸ It does not matter to this discussion of principle whether the Covid-19 regulations, as framed, would enable this defence. Given the police’s “four Es” strategy (footnote 272, pg.5), it is unlikely that enforcement action would have resulted.

¹⁴⁹ Husak (footnote 145), pg.138-139. Cf. Husak, *Overcriminalization*, pg.175.

Covid-19 offences. For instance, it is not difficult to imagine situations where someone left home without reasonable excuse while exercising considerable caution (by avoiding crowds and wearing a face covering). The actor could not be said to have displayed an utter disregard for the risks of infecting others – much less, for the wider public health consequences. Some instances of people travelling to “natural beauty spots” may have fitted this category. According to this principle, behaviour increasing the probability of infection would be insufficient.¹⁵⁰

In support of this principle, Yaffe uses the example of “leash laws” requiring that dogs be kept on leads in public places.¹⁵¹ He concludes that, as offences of “pure risk creation”, a person who acts in the knowledge that their dog is not aggressive should not be punished. Whether or not this is normally correct, there may be strong reasons to discourage this type of subjective judgement during a pandemic, particularly given the relative complexity of these assessments.

The second principle is a “proximity requirement”, involving a woollier judgement on the remoteness of the conduct to the harm. This precludes acts which do not “[make] a significant and direct causal contribution to the occurrence of a consummate harm”,¹⁵² Husak notes the difficulty of applying a “proximity principle” in cases of accumulative harms, which leads him to agree with Feinberg’s proposal of adopting a regulatory scheme.¹⁵³

Covid-19 poses a challenge to this principle. This is by virtue of being both individually and accumulatively harmful, and because of the difficulty in tracing the source of any given infection. Let us assume that the high culpability requirement is well-founded and that some offences could be framed to comply with this. Proximity would nevertheless be a decisive objection to criminalisation grounded in accumulative (but not individual) harms – as actions risking transmission would not form a significant and direct causal contribution to their occurrence.

This conclusion is difficult to justify. Certain acts can be said to have displayed total disregard for the safety of others, even where the relevant harm was not to those directly at risk. A person attending a large social gathering at the height of the pandemic might infect

¹⁵⁰ Husak (footnote 145), pg.138.

¹⁵¹ G Yaffe, “Harmfulness, Wrongfulness, Lesser Evils and Risk-Creation: A Comment on Douglas Husak’s *Overcriminalization*” (2010) 1 Jerusalem Review of Legal Studies 35.

¹⁵² Husak (footnote 145), pg.140.

¹⁵³ Ibid, pg.144 (footnote 109).

other attendees directly, even where asymptomatic and unaware of their own infection. If those individuals did not develop symptoms, they were not meaningfully “harmed” but could pass on Covid-19 to third parties who did become ill. The recklessness is not simply towards other attendees (who have consented to that risk) but to the wider community, in unreasonably behaving in a manner which increases the risks of others becoming infected.

Likewise, adapting the same example, an uninfected person might facilitate contagion (as an extra host) by becoming infected and later infecting others while directly harming only themselves (if others do not develop symptoms). There may be no direct individual harm at all – and, if there is, it may be impossible to attribute this to anyone. The actor is nevertheless culpable in their general contribution towards the spread of a dangerous virus, and the creation of an unreasonable risk that others will (indirectly) contract this.

For that reason, it is not clear why behaviour contributing towards accumulative harms ought to be excluded as a basis for criminalisation, but not the risk of individual harm. This is especially so given the gravity of the most severe, accumulative harms.

None of this is to say that proximity is irrelevant – simply that this formulation is overly-restrictive. Some Covid-19 offences bear a closer connection to the ultimate harm than others. Organising large gatherings which were potential “super-spreader” events are an obvious candidate. Similarly, more targeted measures such as paragraph 45(1)(a), Schedule 21 to the Coronavirus Act 2020 (including potentially-infectious persons failing to comply with a quarantine order) involved “riskier” conduct than wider restrictions on travel and movement. Given the immediate danger to others, the former could reasonably be described as “wrongful”: if others became directly infected (without consenting to the risk), this would certainly violate their rights (as per Feinberg’s definition of “wrongs”).

By contrast, someone who crossed local authority boundaries without leaving their car, while driving alone for leisure, did not contribute towards the risk of infection. Their conduct was not meaningfully harmful – but could still be criminalised under the harm principle, if the overall effect was to reduce activity linked to increased transmission. Whether such activity should be criminalised is an important question raised by theories seeking to move beyond the harm principle. The difficulty with the principles identified here is that these do not enable behaviour to be identified as suitably wrongful by reference to the collective goods threatened.

The problem of imputation posed by von Hirsch remains: are high infection rates, increased hospital admissions and potential collapse of NHS care capacity the “proper outlook” of a person who, by failing to take suitable precautions, displays wilful disregard for others? Low infection rates, a healthy population and strong public health institutions are not only, or even primarily their responsibility, but this does not mean that they are not culpable in increasing the risk to these collective goods. Their small contribution towards these dangers could be reflected in modest penalties.

2.3.5 The harm principle: concluding observations

As has been outlined, accumulative harm is a suitable account of the relevant harm. This can provide positive reasons for resorting to the criminal law, but these theories offer limited assistance in identifying suitable constraints. Fair imputation and (a restricted idea of) proximity are important considerations in that regard. However, in a pandemic – where both individual and accumulative harms may flow from the same conduct – these should not provide a decisive objection.

For many criminal law theorists this rationale is inadequate. If the argument is made on purely instrumental grounds, then this fails to respect the distinctive purpose of criminal law as a censoring institution. I will now turn to this approach and consider whether a wrongs-based justification can be identified. Having identified the relevance of accumulative harm, I ask whether collective interests can provide this. In doing so, I will contend that harm is an insufficient lens through which to fully understand criminalisation in this context.

2.4 Wrongfulness and criminalisation

2.4.1 Theoretical perspectives

While one tradition takes harm as its starting point, other theorists have sought to reemphasise the centrality of wrongdoing to criminal liability. This is exemplified by

Ashworth's claim that "criminal law should be used, and only used, to censure persons for substantial wrongdoing".¹⁵⁴

Losing sight of this, Ashworth contends, risks "an unacceptably distorted system in which the prospects of effectiveness and prevention, not the seriousness of the wrongdoing, would determine decisions to criminalise, decisions to prosecute and decisions about the appropriate penalty."¹⁵⁵

Horder places Ashworth at the forefront of "counter-reformation" thinkers who emphasise the importance of individual autonomy and fundamental principles: including that fault ought to be a prerequisite for criminal liability.¹⁵⁶ Such commentators generally disapprove of strict liability and *mala prohibita* offences,¹⁵⁷ extensive creation of which is emblematic of an enterprise which has become "a lost cause, from the point of view of principle".¹⁵⁸

Husak's theory seeks to address this perceived deficiency. His thesis is that there is a crisis of "overcriminalisation": that criminal law is too broad, both in its reach and content, resulting in too much punishment.¹⁵⁹ He therefore articulates a series of conditions for any justifiable offence.

Three of these principles are potentially relevant: the "non-trivial harm or evil", "wrongfulness" and "desert" constraints.¹⁶⁰ While it has been suggested that these conditions are duplicative of one another,¹⁶¹ Husak is at pains to distinguish them. The first condition is that legislation must be "designed to proscribe a non-trivial harm or evil".¹⁶² Gardner observes that "as a constraint on purpose, this is rather feeble",¹⁶³ given the ease with which legislators can identify these.¹⁶⁴ Perhaps for this reason, Husak downplays its significance.¹⁶⁵

¹⁵⁴ A Ashworth, "Is the Criminal Law a Lost Cause?" (2000) 116 Law Quarterly Review 225, pg.240.

¹⁵⁵ Ibid, pg.250.

¹⁵⁶ J Horder, "Bureaucratic 'Criminal' Law": Too Much of a Bad Thing?" in R A Duff et al (eds), *Criminalization: The Political Morality of the Criminal Law* (2014).

¹⁵⁷ Normally (though controversially) defined as crimes involving behaviour which is not wrongful prior to and independent of criminalisation (as distinguished from *mala in se* offences involving existing moral wrongdoing).

¹⁵⁸ Ashworth (footnote 154), pg.252.

¹⁵⁹ Importantly, he defines this as "hard treatment and censure" (*Overcriminalization*, pg.92-95). While imprisonment is paradigmatic, Husak is unequivocal that "punishments require a justification even when they are not especially severe". *Overcriminalization*, pg.106.

¹⁶⁰ Ibid, Chapter 2.

¹⁶¹ M Moore, "A Tale of Two Theories" (2009) 28 Criminal Justice Ethics 27, pg.37-38

¹⁶² Husak, *Overcriminalization*, pg.66.

¹⁶³ J Gardner, "Overcriminalization: The Limits of the Criminal Law" (2008), Notre Dame Philosophical Reviews <<https://ndpr.nd.edu/reviews/overcriminalization-the-limits-of-the-criminal-law/>>.

¹⁶⁴ Harcourt (footnote 112).

¹⁶⁵ Husak, *Overcriminalization*, pg.72.

The second constraint requires that the conduct must be “in some sense” wrongful.¹⁶⁶ As Husak recognises, a limitation to his analysis is that he does not seek to define wrongdoing. By drawing on the idea of proportionality, however, some limits do emerge: that the level of wrongfulness must be sufficient to merit the degree of punishment.¹⁶⁷ This dovetails with his third constraint: that state punishment must be deserved in response to the wrongdoing.¹⁶⁸ As Husak maintains that punishment cannot be justified on purely utilitarian grounds (to reduce the risk of a greater harm),¹⁶⁹ neither can offences created on that basis. The severe accumulative harms threatened by Covid-19 could not, by themselves, warrant invoking the criminal law.

In attempting to apply these conditions, the analysis risks collapsing into circularity. Punishment was merited if Covid-19 offences targeted conduct that was meaningfully wrongful. This threshold can only be reached if the wrongfulness were of a kind and degree deserving of the relevant punishment.

An intuitive response would be to insist that Covid-19 offences did not prohibit wrongful behaviour, but morally acceptable behaviour on an emergency basis. This would be misplaced – not least given public attitudes, discussed below. Husak, while critical of arguments seeking to identify the wrongfulness of *mala prohibita* offences, does not entirely reject the possibility that such arguments might be found.¹⁷⁰ I suggest that these conceptualisations of wrongfulness provide useful insight.

2.4.2 Wrongfulness of *mala prohibita* offences

Two possible rationalisations for the wrongfulness of *mala prohibita* offences are given by Simester and von Hirsch. The first emerges from their discussion of accumulative harms.¹⁷¹ Simester and von Hirsch straightforwardly accept that each contributor behaves wrongfully. Their conduct is “individually wrong in virtue of its participating in the collective wrong”.¹⁷² While this is plausible, and to be preferred to Husak’s “high culpability requirement” for the

¹⁶⁶ Ibid, pg.66.

¹⁶⁷ Ibid, pg.74-75.

¹⁶⁸ Ibid, pg.83.

¹⁶⁹ Ibid, pg.188-196.

¹⁷⁰ Ibid, pg.118-119.

¹⁷¹ *Crimes, Harms and Wrongs*, pg.85-86. They use the term “conjunctive harms”.

¹⁷² Ibid, pg.86.

reasons below, their treatment of accumulative harms by private individuals is so thin as to offer little guidance.

Secondly, in their discussion of *mala prohibita* offences,¹⁷³ they distinguish between criminalisation and punishment. By creating rules, the state can create norms and expectations. These rules become authoritative and guide behaviour. If there are good reasons for creating a rule then, even if the rule itself is deficient, its “moral force...derives...from the purposes it serves”,¹⁷⁴ and contravention becomes wrongful.

This can be applied to solve “coordination problems” (traffic laws being the classic example) or to provide content to more general expectations: “do not drive at dangerous speeds”, for instance, can be translated into prescribed speed limits. While Husak concedes that this argument can sometimes apply (one instance being road traffic laws), he cautions against over-extending this analogy to either scenarios which are either not truly coordination problems (such as drink driving laws) or which are but are not concerned with pre-existing wrongs (such as using a common language).¹⁷⁵

The government undoubtedly faced challenges of this type from Covid-19. In response to a novel virus, with developing scientific understanding of transmission, public health guidance was both necessary and expected. Assuming that enforcement was required to achieve sufficient compliance,¹⁷⁶ criminal legislation could play a role in translating public expectations – that individuals did not take unreasonable risks of infecting others or increasing transmission during a pandemic – into concrete rules.

The problem is that “unreasonable” (an essential qualification) obscures normative debate on the balance of interests involved. Common sense dictates that drivers going in one direction should be required to drive on the same side of a single carriageway (morality is surely neutral on which). It is less obvious that this reasoning can apply to, for example, the list of reasonable excuses in the March 2020 regulations (outlined in Chapter 1.3.2), which reflects numerous competing values and priorities. It is therefore doubtful that characterising Covid-19 regulations as addressing a coordination problem is apt.

¹⁷³ Ibid, pg.24-29.

¹⁷⁴ Ibid, pg.25.

¹⁷⁵ Husak, *Overcriminalization*, pg.114.

¹⁷⁶ Cf. Susan McVie’s evidence to the UK Covid-19 Inquiry noting a lack of clear evidence on this point, though observing that “the vast majority of countries did follow a sanctions-based model”. Transcript of UK Covid-19 Public Inquiry (Module 2A Hearings, 24 January 2024), pg.177-181 <<https://covid19.public-inquiry.uk/wp-content/uploads/2024/01/24200108/C-19-Inquiry-24-January-2024-Module-2A-Day-7.pdf>>.

A related, though more nuanced argument is offered by Duff. He contends that some “hybrid *mala prohibita*” offences might satisfy a wrongfulness requirement.¹⁷⁷ His favoured examples are driving while over the prescribed limit and sexual intercourse with a child under the age of consent. Both are “hybrid” in the sense that these target existing wrongs (driving while unfit, increasing the risk of accidents; exploitation of the immature and vulnerable) which are not essential to commission of the offence. Difficult assessments concerning impairment and maturity are replaced with simple, bright-line rules based on generalisations about most individuals’ characteristics.

A person can therefore be convicted of these offences despite being innocent of the underlying wrong. Duff submits that no injustice is done here, because the actor takes an unreasonable risk that their (fallible) judgment is mistaken. Those in their position are particularly vulnerable to misjudgement, given the effects of alcohol and sexual temptation. Even if their assessment is correct, the actor behaves wrongfully in refusing to comply with a modest requirement imposed in pursuit of the common good.

This type of rule provides assurance to citizens that others will behave in accordance with regulations imposing reasonable burdens in support of collective interests, rather than relying on their own flawed judgements.¹⁷⁸ Taking an unjustified risk, while disregarding this civic responsibility, represents a criminalisable moral failing. If this is correct then supplementary rules designed to ensure the functioning of the system (such as the requirement to complete a passenger locator form, to manage quarantine following international travel) can also be justified.¹⁷⁹

2.4.3 Wrongfulness of Covid-19 offences

It is on this basis that some “Covid breaches” could satisfy a wrongfulness requirement. Support for this perspective is found in UK-wide research, which has found that compliance with Covid-19 legislation was primarily motivated by normative rather than instrumental reasons.¹⁸⁰

¹⁷⁷ R A Duff, “Crime, Prohibition and Punishment” (2002) 19 *Journal of Applied Philosophy* 97; “Criminalizing Endangerment” in R A Duff and S Green (eds), *Defining Crimes: Essays on the Special Part of the Criminal Law* (2005, OUP), pg.43; *Answering for Crime*, pg.166-172; *The Realm of Criminal Law*, pg.316-320. While the emphasis differs between these accounts, the logical thread is clear.

¹⁷⁸ Cf. V Chiao, “What is the Criminal Law For?” (2016) 35 *Law and Philosophy* 137, pg.138-145.

¹⁷⁹ Duff, *The Realm of Criminal Law*, pg.315.

¹⁸⁰ S Halliday et al, “Why the UK Complied with COVID-19 Lockdown Law” (2022) 33 *Kings LJ* 386.

This has demonstrated that the main drivers were a general commitment to following the law; anticipation of peer disapproval; and a conviction that breaking lockdown rules was morally wrong.¹⁸¹ The first of these is qualified by the finding that perceptions on the legitimacy of specific rules were important.¹⁸² The strength of the obligation people felt to others to comply with specific rules influenced this assessment.¹⁸³ The second driver is linked to the third: social disapproval presupposes the emergence of a norm, which appears to have been grounded in a sense of shared responsibility.¹⁸⁴ Evidence of the negative impact of the UK government's defence of Dominic Cummings, following the infamous Barnard Castle episode,¹⁸⁵ supports that interpretation. This "eroded the sense of collective citizenship that had been helping to maintain high levels of compliance".¹⁸⁶

This outlook was implicit in the First Minister's characterisation of egregious violations as "disgraceful", "selfish"¹⁸⁷ and "utterly irresponsible".¹⁸⁸ Contravening the regulations was thereby associated with flouting social obligations.

Returning to Duff's argument, we can consider whether this broad rationale holds for specific offences. The widest regulations, such as stay-at-home requirements, did not impose "modest" burdens. They interfered dramatically with ordinary life. Given the magnitude of the accumulative harms at which these were directed, these obligations might nevertheless be considered "reasonable" – particularly given widespread public consent.

A thornier issue is whether each regulation was "well-designed to serve"¹⁸⁹ its public health goals. If not, maintaining that individuals took unreasonable risks by preferring their own judgements is unsustainable. Blunter prohibitions during "lockdown" periods were probably easier to justify in this sense. The ban on indoor private gatherings across mainland Scotland

¹⁸¹ J Tomlinson et al, "Law and Compliance During Covid-19", Nuffield Foundation (September 2022) pg.18-23 <<https://www.nuffieldfoundation.org/wp-content/uploads/2020/04/Law-and-Compliance-during-COVID.pdf>>.

¹⁸² Halliday et al (footnote 180), pg.401.

¹⁸³ Ibid, pg.402 and 407-408.

¹⁸⁴ Ibid, pg.403.

¹⁸⁵ For a contemporary report: "Dominic Cummings: Fact-checking the row", BBC News (28 May 2020) <<https://www.bbc.com/news/52828076>>.

¹⁸⁶ Fancourt et al (footnote 9), pg.51.

¹⁸⁷ "Coronavirus (COVID-19) update: First Minister's statement – 9 March 2021", Scottish Government website (9 March 2021) <<https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-statement-9-march-2021/>>.

¹⁸⁸ "Coronavirus Scotland: Nicola Sturgeon slams 'irresponsible' Scots who attended illegal house party at Midlothian mansion", Scottish Sun (3 September 2020) <<https://www.thescottishsun.co.uk/news/6004586/coronavirus-scotland-nicola-sturgeon-house-party-illegal-300-scots/>>.

¹⁸⁹ Duff, *The Realm of Criminal Law*, pg.317.

between 26 December 2020 and 16 May 2021 is one example. These were consistently identified as driving transmission,¹⁹⁰ and difficult to regulate. That many instances were harmless, and reasonable debate was possible on whether the ban was too strict, is no objection to this reasoning. Similarly, despite a more contingent connection with harm, restrictions on travel could be justified on this basis.

This is less obviously true of other regulations, reflecting contentious trade-offs as limited social life resumed.¹⁹¹ As of 14 September 2020, three people from three households meeting outdoors was criminal – after enclosed public spaces (including restaurants, gyms and cinemas) had reopened. This was notwithstanding the higher risk of indoor transmission.¹⁹² The sentiment expressed by one anonymous survey participant captured this disagreement: “Why can a hundred people be sat in a pub, but I can’t see my 15-year old grandson? It doesn’t make any sense, so I’m going to make my own mind up”.¹⁹³

One study concludes that this “creative non-compliance” was commonly used to rationalise contravening the “letter” of the law while abiding by its “spirit”.¹⁹⁴ This suggests that any perceived inconsistencies in the regulations did not damage the strong public commitment to their purpose. However, this injection of subjectivity (influenced by ministers encouraging “common sense judgements”)¹⁹⁵ risked undermining the rationale for punishment.

¹⁹⁰ For example: see footnotes 34 and 187; “Coronavirus: Scotland bans household mixing indoors as Nicola Sturgeon criticises Boris Johnson plan”, *The Independent* (22 September 2020) <<https://www.independent.co.uk/news/uk/politics/coronavirus-scotland-curfew-households-mixing-nicola-sturgeon-boris-johnson-b531956.html>>.

¹⁹¹ One example was the successful petition for judicial review challenging the closure of places of worship: *Philip v Scottish Ministers* [2021] CSOH 32, 2021 SLT 559.

¹⁹² Footnote 190. Note the First Minister’s acknowledgment (footnote 34) that indoor hospitality was a particular risk factor. See also: “Advice from the Scottish Government COVID-19 Advisory Group” (2 July 2020), pg.3 <<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2020/06/covid-19-advisory-group-physical-distancing-advice/documents/covid-19-advisory-group-advice-on-physical-distancing/covid-19-advisory-group-advice-on-physical-distancing/govscot%3Adocument/COVID%2B19%2BAdvisory%2BGroup%2B-%2BAdvice%2Bon%2Bphysical%2Bdistancing.pdf>>. One member of that group wrote: “research has shown that 97% of ‘super-spreading’ events occur indoors, and that outdoor transmission is minimal”. “As more local lockdowns begin, the hard truth is there’s no return to ‘normal’”, *The Guardian* (21 September 2020) <<https://www.theguardian.com/commentisfree/2020/sep/21/local-lockdowns-begin-no-normal-advice-live-with-covid>>.

¹⁹³ “Coronavirus and compliance with government guidance, UK: April 2021”, Office of National Statistics (12 April 2021) <<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/bulletins/coronavirusandcompliancewithgovernmentguidanceuk/april2021>>.

¹⁹⁴ Tomlinson et al (footnote 181), pg.24-25. J Meers et al, “‘Creative Non-Compliance’: Complying with the ‘Spirit of the Law’ Not the ‘Letter of the Law’ under the Covid-19 Lockdown Restrictions” (2023) 44 *Deviant Behaviour* 93.

¹⁹⁵ Meers et al (footnote 194), pg.105-106.

2.5 Normative theories: conclusion

The legislative response to Covid-19 sought to mitigate harm. These extreme measures were primarily taken to protect healthcare infrastructure rather than reduce direct harm to individuals. Feinberg's concept of public accumulative harms is a useful account of the relevant harm. However, principles identified by Feinberg and others to identify the proper scope of criminalisation in response to such harms are lacking.

Once enacted, Covid-19 regulations did not serve a purely instrumental purpose but generated norms. This social contract between state and citizen, and between members of the community can sometimes explain the wrongfulness justifying punishment for failing to comply with Covid-19 regulations. The argument is stronger for conduct flagrantly defying public expectations, or for rational law providing concrete guidance to citizens on how to behave responsibly to minimise transmission.

These are the arguments from criminal law theory which might best explain and justify (at least in part) the creation of these extraordinary offences. I will now explore another perspective on criminalisation, grounded more in practical considerations: the distinct objections raised in the context of infectious diseases. This will lead to a discussion of the pre-pandemic common law and its potential for expansion in this context.

Chapter 3 – Criminalisation of infection

3.1 Introduction

Extensive academic commentary has been generated by criminalisation of exposure to and transmission of HIV. This provides a useful comparator for Covid-19, as a communicable disease whose severity has warranted a specific criminal law response.

It should be immediately acknowledged that sexually transmitted infections can be distinguished from other types. Concerns relating to privacy and autonomy are particularly acute. The potential for stigmatisation and discrimination is less obvious in respect of Covid-19.¹⁹⁶ Nevertheless, other concerns merit further examination.

I will begin by briefly considering the arguments against criminalisation relevant to Covid-19. These relate to the public health impact,¹⁹⁷ and a contention that the underlying science is poorly understood by criminal justice actors, leading to unjust outcomes.¹⁹⁸

I will then outline the legal position in Scotland, highlighting issues which were unresolved before the pandemic. Examination of this will demonstrate the sheer breadth of the law potentially applicable to behaviour risking transmission of Covid-19. As will be shown, this resulted in the boundaries of criminal liability being significantly extended.

3.2 Arguments against criminalisation

3.2.1 Public health impact

The Oslo Declaration (a statement by international advocacy groups) asserts that “[a] growing body of evidence suggests that the criminalisation of HIV non-disclosure, potential

¹⁹⁶ However, on unequal enforcement see K Murray et al, “From Parking Tickets to the Pandemic: Fixed Penalty Notices, Inequity and the Regulation of Everyday Behaviours” (2024) 64 *The British Journal of Criminology* 1310, pg.1319-1321.

¹⁹⁷ M Weait, “Limit Cases: How and Why We Can and Should Decriminalise HIV Transmission, Exposure and Non-Disclosure” (2019) 27 *Med LR* 576, pg.578-579 (“Weait, ‘Limit Cases’”); A Klein, “Criminal law, public health and governance of HIV exposure and transmission” (2009) 13 *The International Journal of Human Rights* 251, pg.255-256; J Chalmers, *Legal Responses to HIV and AIDS* (2008, Hart), pg.150-153; J Spencer, “Liability for Reckless Infection – Part 2” (2004) 154 *NLJ* 448; “Reform of Offences against the Person”, The Law Commission (No.361) (2015), paragraph 6.68 (“Law Commission report”). Oslo Declaration on HIV Criminalisation (2012) (“Oslo Declaration”)

<https://www.hivlawandpolicy.org/sites/default/files/Oslo_declaration.pdf>.

¹⁹⁸ Weait, “Limit Cases”, pg.580; Klein (footnote 197), pg.258-260.

exposure and non-intentional transmission is doing more harm than good in terms of its impact on public health”.¹⁹⁹ While there is no evidence on the health impact of Covid-19 criminal measures,²⁰⁰ some tensions can be identified.

In May 2020, in anticipation of easing “lockdown” measures, the Scottish Government launched “Test and Protect”. This programme sought to identify close contacts of infected persons and advise them to quarantine.²⁰¹ For those who had broken the law, a desire to avoid incriminating themselves and others may have undermined the need for candour on which the system was predicated.

The same is probably not true of Public Health Scotland’s checks on individuals required to quarantine following international travel. Given evidence that the contact details provided on passenger locator forms were often inaccurate, including fake addresses²⁰² – in itself, an offence – it is doubtful that self-incrimination was an important disincentive to answering phone calls and responding truthfully.

Another, more plausible example involved suspects being taken into police custody. From around March 2020, police officers routinely asked suspects whether they had any Covid-19 symptoms on arrest, and while being “booked in” to the station.²⁰³ By that stage, a caution would normally have been administered that the suspect need not answer any questions²⁰⁴ and that anything they said could be used as evidence. If a suspect disclosed symptoms or a positive test then additional precautions (including full PPE and use of a designated station) would be taken.²⁰⁵ If a possible infection was not disclosed – given their interest in not implicating themselves, in the event that they ought to have been isolating – then police officers (and their subsequent contacts) were placed at greater risk. That several charges followed

¹⁹⁹ “Oslo Declaration”, pg.1.

²⁰⁰ Footnote 176.

²⁰¹ “Test and Protect rolled out nationally” (26 May 2020), Scottish Government website <https://www.gov.scot/news/test-and-protect-rolled-out-nationally/>. Its importance was highlighted in the “Route Map” (footnote 17), pg.10.

²⁰² Footnote 176, pg.204

²⁰³ This was clear from reading police reports for the research outlined in Chapter 4.

²⁰⁴ Except providing basic personal details: the Criminal Procedure (Scotland) Act 1995, section 13.

²⁰⁵ Separately, it was apparent that many accused falsely claimed to have Covid-19 hoping that this would prevent them from being arrested.

where accused persons either failed to disclose or lied about²⁰⁶ (but often later admitted) their Covid status to police officers further demonstrates the problem.²⁰⁷

There is inevitably a degree of speculation involved in these observations. The point is simply to highlight that the criminal law and public health objectives were not always aligned and may sometimes have conflicted.

3.2.2 Poorly understood science

Weait argues that there are “countless examples of cases in which the criminal law has been used, even where the defendant took reasonable precautions and there was no transmission, or where there was no risk of transmission”.²⁰⁸ For a novel virus, when applying the criminal standard of “recklessness” to uncertain science, there is a real prospect of convictions founded on misconceptions.

Uncertainty over “fomite transmission” of Covid-19 (via contaminated surfaces) is one possible example of this problem. In July 2020, a WHO briefing concluded that this might be possible but was unconfirmed.²⁰⁹ A more recent briefing by the US Centers for Disease Control and Prevention concluded that, while possible, “the risk is low”.²¹⁰ Another article published in *The Lancet Infectious Diseases* in July 2020 opined that “the chance of transmission through inanimate surfaces is very small” outside of laboratory conditions.²¹¹ By January 2021, this appears to have become the consensus.²¹²

²⁰⁶ Cf. *Kimmins v Normand* 1993 SLT 1260 (appeal against conviction for culpable and reckless conduct refused where the appellant falsely denied having a syringe in his pocket before being searched by a police officer); and *Mallin v Clark* 2002 SLT 1202 (conviction where a suspect had refused to answer a question on the matter quashed on the basis that suspects are not generally under a positive obligation to disclose having sharp items in their possession, given the right to silence).

²⁰⁷ See Chapter 4.5, Tables 48-50.

²⁰⁸ Weait, “Limit Cases”, pg.580. Klein (footnote 197) also provides examples from other jurisdictions.

²⁰⁹ “Scientific Brief”, World Health Organisation (9 July 2020) <<https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>>.

²¹⁰ “Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments”, Centers for Disease Control (4 May 2021) <<https://stacks.cdc.gov/view/cdc/104762>>.

²¹¹ E Goldman, “Exaggerated risk of transmission of Covid-19 by fomites” (2020) 20 *Lancet Infectious Diseases* 892.

²¹² D Lewis, “COVID-19 rarely spreads through surfaces. So why are we still deep cleaning?”, *Nature* (29 January 2021) <<https://www.nature.com/articles/d41586-021-00251-4>>.

These findings may be relevant to prosecutions for touching surfaces while infectious (or claiming to be),²¹³ and for deliberately spitting or coughing in the cell area of police vans. Focusing on spitting cases (which were far more common),²¹⁴ it may be that – even when police officers were on the other side of a protective screen – enough of the virus could remain airborne to infect others, after the van’s doors were opened. The WHO briefing hypothesised that exhaled droplets could evaporate and lead to airborne transmission, but that the rate of evaporation and the dose required for infection is unknown.²¹⁵ The point is that whether this posed any real risk is not immediately obvious.

Expert evidence might have clarified this (at least, later in the pandemic) but does not appear to have been obtained for any of these cases – albeit none proceeded to trial. It may be that where the risks are simply unknown this does not matter. In principle, recklessness can encompass not only creating actual danger but also unreasonably gambling that a potential harm will not materialise. Driving the wrong way round a blind corner is an example of the latter. This point is discussed at Chapters 3.3.4 to 3.3.5, where I argue that Covid-19 offences pointed towards a very broad definition of endangerment.

Alternatively, these offences could be conceptualised as attempted intentional transmission. This would be competent, regardless of the prospects of success.²¹⁶ However, this was almost never (if ever) how these charges were framed.²¹⁷

More generally, it is at least possible that assumptions were made regarding transmission (and resulted in convictions, including through guilty pleas) where the actual risks were in fact negligible.

3.3 Culpable and reckless conduct and infection

Having raised the issue of recklessness, I will now explore legal issues related to exposure and transmission of infection. I will begin with a brief outline of the legal background relating to HIV cases.

²¹³ See Chapter 4 and Appendix 7 (trends across Covid-19 legislation charges: “...behaviour perceived as ‘risky’...”).

²¹⁴ See Chapter 4.5, Tables 39 and 41.

²¹⁵ Footnote 209.

²¹⁶ *Docherty v Brown* 1996 JC 48.

²¹⁷ See Chapter 4. This is phrased cautiously, as I have not specifically recorded this.

3.3.1 The legal background

Each of the five individuals in Scotland who are known to have been prosecuted for sexual transmission of HIV²¹⁸ were charged with culpable and reckless conduct.²¹⁹ This is an imprisonable offence, triable on indictment. Juries are commonly directed that:

It's a crime to endanger others by reckless conduct. This crime can be committed in many different ways. Its essence is this. It involves exposing an individual, or particular individuals, or the public generally, to a significant risk to life or health.

A high degree of recklessness is needed, more than carelessness or negligence. The accused must have acted with an utter disregard of the consequences of his conduct on the public, with total indifference to their safety.²²⁰

This standard direction further explains that resulting injury is not required – exposure to risk is sufficient – and that recklessness is to be assessed objectively.²²¹ While older authorities tended to distinguish between recklessly causing real injury to a named individual and reckless conduct to the danger to the lieges (or to a specific category of persons),²²² this definition collapses that distinction.

In 2001, Stephen Kelly became the first person in the UK to be convicted of a criminal offence occasioned by transmission of HIV.²²³ The indictment averred that: knowing or believing that he was infected with HIV, Kelly culpably and recklessly pretended to the complainer that he was not so infected and repeatedly had sexual intercourse with her,

²¹⁸ Stephen Kelly, Christopher Walker, Giovanni Mola, Mark Devereux and Darryl Rowe. Walker was found to be unfit for trial: R Davidson, *The Law, Sex and Society in Scotland since 1900* (2018, CUP), pg.191. Rowe's case, uniquely, involved intentional transmission – "Darryl Rowe admitted infecting men with HIV in Edinburgh", BBC News (4 May 2018) <<https://www.bbc.com/news/uk-scotland-edinburgh-east-fife-44003613>>. The HIV Justice Network identified two other, non-sexual (exposure) cases: <<https://www.hivjustice.net/country/gb/gb-sc/>>.

²¹⁹ I am treating this as a single offence rather than two (committing either by "causing injury" or "endangering the lieges"). These are grouped together in the Jury Manual: Judicial Institute for Scotland (3 September 2024), Chapter 58.1-58.2. Similarly, a single "charge code" was predominantly used by COPFS (see Chapter 4.5 below). By contrast, these are treated as separate crimes in J Chalmers and F Leverick (eds), *The Criminal Law of Scotland* (4th edition) (2023, W. Green), Vol.II, Chapter 33.56-33.61.

²²⁰ Jury Manual (footnote 219), Chapter 58.1-58.2. While this guidance is not itself authoritative, it is a neat summary of the law.

²²¹ Ibid.

²²² The leading case remains *HM Advocate v Harris* 1993 JC 150, which confirms that recklessly causing injury is a crime known to the law of Scotland. The blurring of danger and injury was hinted at in the opinion of Lord Murray, at 156. See also *Khalid v HM Advocate* 1984 JC 23 at 34, and discussion in L Farmer, P Brown and J Lloyd, "Scots Criminal Law and AIDS" 1987 SLT (News) 389.

²²³ Chalmers, "STDs and the Criminal Law", pg.259. The case is unreported. However, a ruling by the trial judge on admissibility was published by SCTS: <<https://www.scotcourts.gov.uk/media/2rylzcbbk/mac2606-her-majestys-advocate-vstephen-robert-kelly.pdf>>.

causing her to contract the virus, “to her permanent impairment, to the danger of her health and to the danger of her life”.²²⁴

Tadros notes that it is not immediately apparent which elements of this indictment were essential for conviction.²²⁵ It is unclear whether this offence was completed by causing the complainer to contract the infection or because of the resulting danger to her health. Whilst the distinction is less significant with a life-changing condition like HIV, this might be important for less serious illnesses, where infection carries a lower risk of severe consequences.

Both Chalmers and Tadros observed that liability might follow, in similar circumstances, for exposure to the risk of infection.²²⁶ This possibility has since been confirmed by the case against Mark Devereaux.²²⁷ In 2010, Devereaux pleaded guilty to culpable and reckless conduct by transmitting HIV to one sexual partner and exposing three others to that risk.²²⁸ Another prosecution, of Giovanni Mola, shared certain similarities.²²⁹ In each of these cases, the accused engaged in unprotected sexual intercourse with the complainer in the knowledge that he had HIV and without disclosing his status. *Mola* confirmed that this offence can apply to other sexually transmitted infections. Whether this could extend to non-sexually transmitted illnesses remained an open question.²³⁰

This question has now been answered, following numerous prosecutions for culpable and reckless conduct by risking transmission of Covid-19. In this section, I will highlight uncertainties in the law following the HIV cases which allowed this offence to be interpreted expansively. It will become apparent that the nature of the respective viruses – in differing modes of transmission and harms – conditions how we think about and structure the criminal law response.

²²⁴ Chalmers (footnote 223), pg.264. For a detailed summary of the circumstances: Davidson (footnote 218), pg.186–187.

²²⁵ V Tadros, “Recklessness, Consent and the Transmission of HIV” (2001) 5 Edin LR 371, pg.371-372.

²²⁶ Chalmers, “STDs and the Criminal Law”, pg.266-267; Tadros (footnote 225), pg.374.

²²⁷ *HM Advocate v Mark Devereaux* (2010) (unreported).

²²⁸ For the circumstances: Davidson (footnote 218), pg.193; “HIV man jailed for ‘reckless sex’”, BBC News (25 February 2010) <http://news.bbc.co.uk/2/hi/uk_news/scotland/north_east/8519593.stm>.

²²⁹ *HM Advocate v M* 2007 SLT 462. The report relates only to a Contempt of Court order. For the circumstances, see: “HIV man recklessly infected woman”, BBC News (7 February 2007) <http://news.bbc.co.uk/2/hi/uk_news/scotland/edinburgh_and_east/6337903.stm>. A copy of the sentencing statement is available on the BBC website: <http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/05_04_07_mola.pdf>.

²³⁰ Chalmers, “STDs and the Criminal Law”, pg.273-274.

3.3.2 Legal uncertainties

The formal scope of criminal liability for HIV transmission and exposure remains unclear, given the small number of (similar) cases and lack of appeals against conviction. The qualification “formal” is used, given publication by COPFS of a prosecution policy for sexual transmission of infections, following *Devereaux*.²³¹ This sets out multiple factors likely to militate against prosecution, including the presence of informed consent and the use of precautions (whether condoms or antiretroviral treatment).

The question of consent is the first legal uncertainty which I will address. While this issue is of mainly theoretical interest in relation to Covid-19, the others (liability for exposure, and whether actual knowledge of infection was required) had important practical consequences.

3.3.3 Consent

COPFS’ policy asserts that, while consent is not a defence to a charge of culpable and reckless conduct, informed consent would make it “highly unlikely that the requisite standard of criminal recklessness would be achieved”.²³² Given that consent was not at issue in either of the cases in Scotland which proceeded to trial, this point has yet to be authoritatively determined.²³³

This interpretation is consistent with a line of Scottish authority that consent to danger is not a defence to its reckless causation.²³⁴ The approach taken in similar cases in England, distinguishing between consent to harm (which cannot provide a defence) and to the risk of infection (which can),²³⁵ might cast some doubt on this. This allowed the controversial decision in *R v Brown*²³⁶ – that consent was not a defence to deliberate infliction of pain during extreme acts of sadomasochism – to be distinguished.

While this would surely lead to the correct outcome in HIV cases involving informed consent, treating consent as solely relevant to recklessness (rather than as a distinct defence)

²³¹ “Prosecution policy on the sexual transmission of infection”, COPFS website (1 July 2014)

<<https://www.copfs.gov.uk/publications/prosecution-policy-on-the-sexual-transmission-of-infection/html/>>.

²³² Ibid, “Factors tending against prosecution”, “Consent by the victim”.

²³³ See discussion, following *Kelly*, in Chalmers, “STDs and the Criminal Law”, pg.271-273; Tadros (footnote 225), pg.377-379.

²³⁴ *Khaliq; Ulhaq v HM Advocate* 1991 SLT 614; *Sutherland v HM Advocate* 1994 JC 62.

²³⁵ *R v Dica* [2004] QB 1257; *R v Konzani* [2005] 2 Cr App R 14.

²³⁶ [1994] 1 AC 212.

is problematic. Hypothetical examples illustrating this point are not difficult to imagine. One is a couple living in a small flat who leave to self-isolate with parents at their (larger, remote) house on testing positive for Covid-19.²³⁷ Assuming that the entire household quarantined, the only risk would be to others who had consented to the risk. If the parents belonged to a high-risk category, then there may be a real risk of serious illness. A far-reaching assessment of whether this was suitably reckless might turn on scientific evidence: the likelihood of infection based on physical proximity and the activities concerned; and the probability of severe consequences, if infected. However, on a purely intuitive level, few would describe this as displaying an “utter disregard” towards or “total indifference” for the safety of the other householders.

The same intuition would probably not be held for adults who attended “pox parties” to build immunity to Covid-19.²³⁸ In the absence of widely available testing confirming whether any adult was infected, each person would be consenting to the possibility rather than the inevitability of harm (as they might not become infected or experience symptoms). A gathering of this kind, where adults with symptoms tried to infect others, could be completely self-contained. That each attendee would be demonstrating complete disregard for their own health does not preclude the possibility that they were displaying this for others’ as well. Therefore, participants could be behaving both with a high degree of recklessness and with informed consent.²³⁹

One way of distinguishing these scenarios would be to consider the reasonableness of the risk in assessing recklessness. In the first example, if the couple’s action were motivated by concern that they would be unable to care for a child if they became very unwell, this might justify the risk.²⁴⁰ If those factors were not present, the sense that this is not criminally reckless (absent wider risk to the community) becomes harder to rationalise. This is the type of activity for which the court in *Dica* warned that criminal prohibitions, straying into purely

²³⁷ This is borrowed from aspects of the Dominic Cummings scandal (footnote 185).

²³⁸ Remarkably, this idea was floated by the UK’s most senior civil servant. “Mark Sedwill apologises for suggesting ‘chicken pox parties’ for COVID immunity in early stages of pandemic”, Sky News (8 November 2023) <<https://news.sky.com/story/mark-sedwill-apologises-for-suggesting-chicken-pox-parties-for-covid-immunity-in-early-stages-of-pandemic-13003335>>.

²³⁹ They may have underestimated the risks but (absent deception) it is doubtful that this would vitiate consent. Neither *Dica* nor *Konzani* meaningfully elaborated on “informed consent”.

²⁴⁰ This was part of the explanation given by Cummings (footnote 185).

personal risk-taking, would be impracticable to enforce, and inevitably inconsistent across different areas of private life.²⁴¹

The second scenario is easier to characterise as reckless due to a social consensus that there is little value in deliberately spreading disease.²⁴² If this is all that separates them, then these examples illustrate that judging culpability must involve assessing the value of the activity being undertaken. This is particularly true where consent to individual harm is engaged (albeit scenarios where no non-consenting parties were endangered must have been extremely rare). More generally (as noted in Chapter 2.3.2), social expectations regarding the type of risk which people might expect to take in everyday life, are an important factor in these assessments.²⁴³

3.3.4 Exposure

More significantly, the circumstances in which exposure to infection with HIV might be criminal has never been clarified. COPFS' policy states that, where infection did not result, prosecution "would only be contemplated in exceptional circumstances".²⁴⁴

Farmer, Brown and Lloyd argued that by equipping "real injury" and "danger", the court in *Khaliq* opened the door to a wide range of cases.²⁴⁵ The concept of danger, they cautioned, is unavoidably vague.

While excluding exposure as a basis for liability would arguably "accord chance an unduly prominent role in the attribution of criminal responsibility",²⁴⁶ the question remains as to where the line should be drawn. This is particularly so with a virus which spread so easily in a variety of contexts. As noted earlier, given the scientific complexities involved, courts may not be well-suited to assessing the risks.

Covid-19 prosecutions for culpable and reckless conduct seem to have exclusively alleged exposure.²⁴⁷ The model case (if not the most common) involved failure to self-isolate. There

²⁴¹ *Dica* at [51].

²⁴² *Ibid*, at [46].

²⁴³ Laird, (footnote 103), pg.220.

²⁴⁴ Footnote 231, "proof of culpable and reckless conduct", part (c)(i).

²⁴⁵ Farmer, Brown and Lloyd (footnote 222), pg.390.

²⁴⁶ J Chalmers, "The criminalisation of HIV transmission" (2002) 28 *Journal of Medical Ethics* 160, pg.161

²⁴⁷ I have not noted any in which transmission was specifically alleged (unsurprisingly, given difficulties in proving the source of infection). However, see footnote 346.

were 77 culpable and reckless conduct charges of this kind on COPFS' systems.²⁴⁸ We might ask whether anything further, beyond leaving quarantine, would be required to complete the crime. The extent of contact with others and the use of precautions (such as keeping a two-metre distance or wearing a mask) would no doubt be relevant to *mens rea*. However, the *actus reus* (exposing others to a significant risk to life or health) is capable of being so broadly construed that arguably little else would be required, in most cases.²⁴⁹ Actual danger is probably not required at all.

Tadros' discussion of *Kelly* illustrates the potential breadth of this offence. Using the following examples, Tadros distinguished between four types of recklessness:

1. Forcing someone to play Russian roulette. If the bullet is in the firing chamber (which is unknown), the person will almost certainly be killed. The actor is uncertain about an important circumstance.
2. Firing a gun in another person's direction to scare them. The uncertainty relates to the consequences.
3. Firing a gun into a room without knowing whether anyone is in it. If someone is, there is a risk of injuring them. Both the circumstances and consequences are uncertain. The room is occupied.
4. A variation on the third type where the room is empty.²⁵⁰

Tadros' contention was that Scots law does not meaningfully differentiate between these kinds of recklessness. He identified *Kelly* as involving the second type. The accused knew that he had HIV but the consequences of having unprotected sexual intercourse, while foreseeable, were uncertain.

The law, Tadros argued, did not exclude liability for the third and fourth types of recklessness. Therefore, a person who acted as *Kelly* did could be liable – regardless of whether they had HIV – if they believed that there was a significant risk that they were infected. Their actions, while uncertain about the circumstances (their HIV status) and the consequences (whether infection would result) would be suitably reckless – whether they were infected (type 3) or not (type 4).

²⁴⁸ See Chapter 4.5, Tables 45-47 and 50.

²⁴⁹ Note prosecutors' acceptance that Margaret Ferrier wore a mask in the House of Commons (footnote 14).

²⁵⁰ Tadros (footnote 225), pg.375-376.

In support of this, he referred to cases involving needlestick injury risking infection,²⁵¹ where it was not necessary to prove that the needles were actually infected.²⁵² While those cases still involved (minor) injury (sufficient to complete the crime), this is not what made these serious – but rather the subsequent risk of infection.

This approach is consistent with authorities on assault to danger of life, where there is no requirement that the consequences were life-threatening. In cases involving a child being thrown out of a train,²⁵³ and a stabbing,²⁵⁴ the court found it sufficient that the accused's actions inherently had the potential to endanger the victim's life.

With Covid-19, however, the risks are considerably more remote and speculative. Discussion of whether actual knowledge is required should demonstrate this.

3.3.5 Actual knowledge

COPFS' policy on sexual transmission states that while the accused must have known that they were infected, evidence of this can come from sources other than testing.²⁵⁵ Establishing "wilful blindness" could suffice, though those cases "are likely to be rare".²⁵⁶

By contrast, Chalmers suggests that knowledge is not required at all.²⁵⁷ The test, in a HIV case, is whether the accused's actions displayed an utter disregard for the possibility of the complainant contracting the virus – admittedly, difficult to establish without knowledge or circumstances strongly indicating infection.²⁵⁸

Tadros presumed that a subjective element was required: that the accused must (at least) believe that there was a significant risk that they were HIV-positive.²⁵⁹ In England and Wales, the Law Commission recommended that the law should require, at minimum, that the

²⁵¹ Footnote 206.

²⁵² Tadros (footnote 225), pg.376.

²⁵³ *HM Advocate v Thom* (1876) 3 Couper 332.

²⁵⁴ *Kerr v HM Advocate* 1986 SCCR 91.

²⁵⁵ Footnote 244, part (b).

²⁵⁶ *Ibid.*

²⁵⁷ Chalmers, "STDs and the Criminal Law", pg.267-268.

²⁵⁸ *Ibid.*

²⁵⁹ Tadros (footnote 225), pg.377.

defendant was aware of specific information indicating a high probability that they were infected.²⁶⁰

This was not the position in relation to Covid-19. Several culpable and reckless conduct charges proceeded in court where there was no suggestion that the accused was, or believed, that they were infected. Most charges instead involved generally “risky” behaviour. The most common example, especially during peaks in infection, was hosting household “parties” or gatherings. There were 151 such charges.²⁶¹

Similarly, for most charges (17 out of 28) where an accused was alleged to have spat or coughed within a police van, there was no evidence (and the Crown were not alleging) that the accused had Covid-19.²⁶² In total, only around one-third (167 out of 486) of culpable and reckless conduct charges on COPFS’ systems with a “coronavirus” modifier involved any suggestion that the accused was infected.²⁶³

This is a consequence of the nature of the virus, which did not require a person to be infected for their behaviour to create risks towards others. As noted at Chapter 2.3.4, an uninfected person might behave recklessly towards the public generally without directly harming anyone else.

The court’s analysis in *Lindsay*²⁶⁴ is insightful. This appeal against sentence was the only reported case in Scotland relating to Covid-19 offences.²⁶⁵ The accused pleaded guilty to culpable and reckless conduct to the danger of life by coughing in the faces of two police officers. There was no suggestion of infectiousness, and the danger was therefore “potential rather than actual”.²⁶⁶ The Sheriff at first instance referenced “the very low rate of Covid-19 in the Highlands” at the time, accepting that “the objective risk to the officers...was very low”.²⁶⁷

The High Court did not accept that this was relevant to sentencing. The court reasoned: “we cannot see that the fact that the respondent was not displaying COVID-19 symptoms is a factor in his favour: there appears to have been a real risk that the condition may be

²⁶⁰ Law Commission report, paragraphs 6.16-6.19.

²⁶¹ See Chapter 4.5, Table 34.

²⁶² Footnote 214.

²⁶³ Near the halfway point, this was about one-fifth (50 out of 241) – presumably as testing was less widespread.

²⁶⁴ *HM Advocate v Lindsay* 2020 JC 293.

²⁶⁵ A judgment was also published for *Dewar and McLean v HM Advocate* 2021 HCJAC 28, another sentencing appeal, involving assaults by spitting at police officers.

²⁶⁶ *Lindsay*, at [17].

²⁶⁷ *Ibid*, at [3].

transmitted by those who are asymptomatic carriers of it, even if the risk may be a small one”.²⁶⁸ Far from requiring that an accused believe they might be infected, this appeared to impose a presumption: that they should be treated as if they were. During a pandemic, this may be appropriate – but the implications are significant.

On Tadros’ taxonomy, many of these cases involved “type 3” or “type 4” recklessness. These accused were taking “a risk of a risk”.²⁶⁹ There may be one further possibility. Returning to “fomite transmission”, charges where accused persons spat in the back of police vans seem to have been brought on the straightforward basis that this risked spreading infection. That may or may not have been correct. Either way, given uncertainty as to whether the virus could be transmitted in this manner, they were arguably exposing others to a significant risk to health while displaying an utter indifference for their safety. They might therefore be said to have taken a risk (whether they were infected) of a risk (whether this could transmit) of a risk (whether others would be infected).

This is even more remote than any of the categories previously identified. Accordingly, when Tadros observed that “Scots law is potentially very expansive in this area”,²⁷⁰ the full extent of this had yet to become clear.

3.4 Criminalisation of infection: conclusion

Two key points have emerged from this chapter’s discussion of criminalisation of exposure to, and transmission of infection.

Firstly, this has highlighted the problems inherent in seeking to regulate communicable diseases through the criminal law. While the public health impact of Covid-19 criminal measures is largely unknowable, tensions between the interests of public health and the rights of suspects can be identified. Moreover, criminal justice actors assessing recklessness sometimes proceeded on a limited (or mistaken) understanding of the relevant science.

²⁶⁸ Ibid, at [17].

²⁶⁹ Tadros (footnote 225), pg.377.

²⁷⁰ Ibid, pg.372.

Secondly, this has demonstrated that there was no requirement that an accused was infectious, or that transmission was possible, to establish criminal recklessness. This is a consequence of the unsettled common law position, and the distinct nature of Covid-19.

In support of this analysis, I have drawn upon the empirical research undertaken as part of this thesis. In my next chapter, I set out my findings in full.

Chapter 4 – Enforcement

4.1 Introduction

My previous chapter marked a shift in the focus of this thesis: from “formal” to “substantive” criminalisation.²⁷¹ Having outlined the new offences created (in Chapter 1) and examined their justification (in Chapter 2) I will now assess how these were used in practice. I will then build on my analysis of the common law (in Chapter 3) by showing the results of this development.

The criminal offences in Covid-19 legislation purported to place such severe restrictions on ordinary life that they were undoubtedly significant on their own terms, regardless of whether these were enforced. However, it would be a mistake to ignore enforcement practices for that reason. The legislation outlined conferred substantial powers on state actors. The range of conduct which rendered citizens potentially liable to state interference and punishment makes understanding the extent to which (and circumstances in which) these offences were invoked all the more important.

There is limited information available on this point. In this chapter, I present the findings from research I have undertaken to address this gap. The aim is to identify the types of conduct which tended to result in prosecution in court (or alternatives, including no prosecutorial action). This will not only improve our understanding of enforcement but can also provide insight into the strength and clarity of the justification for using the criminal law in this manner. I contend that these findings suggest that uncertainty over this justification permeated a tentative and piecemeal response.

4.2 Available data on enforcement

4.2.1 Fixed Penalty Notices

I will start by highlighting limitations in the data currently available. While valuable research has been undertaken by the University of Edinburgh project *Policing the Pandemic in Scotland* – supporting the work of the Independent Advisory Group (IAG) on Police

²⁷¹ Defined at Chapter 4.3.1.

Scotland's use of emergency powers – their primary interest was in policing, including trends in FPNs issued, rather than criminalisation.

Their work nevertheless provides a useful starting point. It reveals that from 27 March 2020 to 31 May 2021, Police Scotland issued 20,410 Covid-19 FPNs.²⁷² 91.2% of fines were for the lowest amount (£60).²⁷³ While figures per regulation are not provided, most FPNs were issued during two “phases”, coinciding with the strictest measures. These were: from March to June 2020 (while the March 2020 regulations were in force) and, to a greater extent, from January to May 2021 (while the Local Levels regulations were in force).²⁷⁴ The respective peaks were around mid-April 2020 and mid to late February 2021.²⁷⁵

My FOI requests, querying the number of FPNs per offence, were unsuccessful. Police Scotland (ongoing public inquiries notwithstanding) advised that “the system that was used to record [this data] is no longer available”.²⁷⁶ Scottish Courts and Tribunals Service, with whom FPNs are registered, responded that data was only held for the March 2020 regulations.²⁷⁷

While granular data has proved elusive, the overall picture is reasonably clear. As McVie et al explain, Police Scotland maintained a database of Covid-19 “interventions” from an early stage in the pandemic.²⁷⁸ This records that while 84.6% of interventions involved dispersal (see Chapter 1.3.4), only 11.6% resulted in an FPN being issued and only 0.7% in arrest.²⁷⁹ This seems consistent with the “four Es” strategy adopted by Police Scotland, in which enforcement was a last resort.²⁸⁰

This data cannot reveal whether some types of offending were more likely to result in enforcement action. Anecdotal evidence from interviews of police officers suggests that this was more common with large gatherings and house parties.²⁸¹ Likewise, the timing and

²⁷² McVie et al, “Police Use of Covid-19 Fixed Penalty Notices in Scotland – Trends in Enforcement from March 2020 to May 2021” (4 August 2022), pg.11 <<https://www.law.ed.ac.uk/sites/default/files/2022-08/FPN%204th%20report%20-%20FINAL.pdf>>.

²⁷³ Ibid, pg.13.

²⁷⁴ Ibid, pg.9-10.

²⁷⁵ Ibid.

²⁷⁶ See Appendix 2 (Police Scotland's response to my FOI request). The data published online, last updated in November 2021, is older than that published by McVie et al.

²⁷⁷ See Appendix 3. All Covid-19 FPNs have seemingly been recorded by SCTS as a single offence under these regulations.

²⁷⁸ Footnote 272, pg.45. They note that the major limitation was that this database was reliant on manual updates by officers.

²⁷⁹ Ibid, pg.11. Around two-thirds of interventions did not involve a formal “instruction” to disperse.

²⁸⁰ Footnote 272, pg.5.

²⁸¹ Footnote 58, paragraph 11.

location of FPNs pointed towards a shift from daytime policing of public places during the first “lockdown” to nighttime focus on private places in the second.²⁸²

Incidentally, according to McVie, 8% of FPNs issued from March to May 2020 were later rescinded by Police Scotland (data for later periods is not available).²⁸³ While the reasons for this were not available, there was some evidence of rescission following review by senior officers.²⁸⁴ My attempt to obtain updated figures and reasons for rescission was unsuccessful.²⁸⁵

4.2.2 Charges reported to the Procurator Fiscal

McVie’s data report is (to my knowledge) the only commentary on reporting and prosecution of Covid-19 offences in Scotland. As of 31 June 2021, 2,221 charges had been reported to the Procurator Fiscal for offences under Covid-19 legislation.²⁸⁶ The same “peaks” in enforcement as noted above (in relation to FPNs) were evident: 38.1% of these were under the March 2020 regulations, and 39.1% under the Local Levels regulations.²⁸⁷

At that time, no marking decision had been taken on at least 21.1% of these charges.²⁸⁸ 63.13% of charges marked for court were ongoing.²⁸⁹ McVie nevertheless concluded that the low number of “no action” decisions compared to reported crime generally, and low proportion of cases being discontinued, “provides reassurance that the vast majority of charges reported to the COPFS met the appropriate prosecutorial threshold”.²⁹⁰

²⁸² McVie et al (footnote 272), pg.15-16.

²⁸³ Footnote 48, paragraph 28.1.

²⁸⁴ Ibid.

²⁸⁵ See Appendix 2.

²⁸⁶ COPFS is Scotland’s sole prosecution authority. Following investigation, reporting agencies (most commonly, Police Scotland) submit a report to the Procurator Fiscal (“PF”) for a decision on prosecution. Various “marking” decisions are available, including: “direct measures” which do not amount to a conviction (PF Warning letters, Fiscal Fines, unpaid Work Offers), diversion (to social work or the Children’s Reporter) and court proceedings. While the PF can place an accused on petition (normally the first stage in solemn proceedings), prosecution on indictment is at the instance of the Lord Advocate and requires authorisation from Crown Office. As the PF prosecutes “in the public interest”, they can take no proceedings even where there is sufficient evidence.

²⁸⁷ S McVie, “Data Report on Police Charges Reported to the Crown Office and Procurator Fiscal Service under the Coronavirus Regulations: March 2020 to June 2021” (25 August 2021), pg.5
<<https://www.law.ed.ac.uk/sites/default/files/2021-09/COPFS%20Data%20Report%201.pdf>>.

²⁸⁸ Ibid, pg.9. This, misleadingly, excludes “summary” and “solemn” charges on which no decision had been taken (pg.10).

²⁸⁹ Ibid, pg.10. Calculated from the “ongoing” column in Table 2.

²⁹⁰ Ibid, pg.13. See also pg.9 and executive summary regarding discontinuations.

Given that McVie provides figures showing that more prosecutions resulted in acquittal than conviction,²⁹¹ this is a surprising conclusion. It was probably too early to judge – and this metric assumes that COPFS’ decision-making was correct. There was no information on the type of conduct involved, on which to assess the merits of prosecution.

COPFS have since provided updated statistics in response to my FOI requests.²⁹² These tables (produced as Appendix 4B) are more detailed than previously published data, in showing: number of charges and outcomes by offence rather than set of regulations; whether convictions and acquittals were by agreed plea or after trial; and the direct measure used (including diversion to other agencies).

As I will later refer extensively to data from my own research, I will not reproduce lengthy extracts from this response. Instead, I will briefly note some trends.

The most commonly reported charges were regulation 5(1) of the Local Levels regulations (42.9% of the total) and regulation 8(1) of the March 2020 regulations (30.6%).²⁹³ Overall, 926 charges (37.4%) were marked for court proceedings, compared to 1,068 direct measures and diversions (42.9%) and 373 charges (14.9%) on which no action was taken. The proportion of direct measures issued for some offences was higher than for others: 51.7% of charges under regulation 5(1), Local Levels regulations compared to 33.3% of charges under regulation 8(1), March 2020 regulations (suggesting a lighter-touch approach later in the pandemic).²⁹⁴

Very few charges (1%) proceeded to trial and only 10.3% of charges reported resulted in a conviction. More charges resulted in acquittal (490) than conviction (256), but most acquittals (452) involved acceptance of Not Guilty pleas – suggesting that these were commonly “bargained away” in plea negotiations (albeit this data did not confirm whether those accused pleaded guilty to other charges).

While more could be said about this data, it reveals little about the type of behaviour which tended to result in reporting and prosecution. This is the question I will now explore.

²⁹¹ Ibid, pg.10.

²⁹² My first request omitted some offences. As the response to my second request contained every offence, I have only included the latter.

²⁹³ The “general” offences in these regulations – see Chapter 1.3.2.

²⁹⁴ See also Tables 1-2 below.

4.3.1 Case review exercise: justification

A complete account of criminalisation must grapple not only with formal but substantive criminalisation: recognising that criminalisation consists not only in the content of legislation, but (amongst other factors) in police and prosecution policy and exercises of discretion by state actors. This ultimately determines which cases reach court and therefore who is liable to punishment.²⁹⁵ For this reason, it has been said that “prosecutors are the criminal justice system’s real lawmakers”.²⁹⁶

While this is perhaps an overstatement, prosecutorial discretion is undoubtedly an important element in application of the law. Moreover, in a common law system, decisions by prosecutors and courts test and often expand the contours of liability.

Given this concentration of power, it is perhaps surprising that the use of criminal offences created by Covid-19 legislation in Scotland has not been seriously examined. The IAG’s scrutiny of police exercise of emergency powers is probably the closest analogue, but (beyond McVie’s treatment, mostly as a cross-check on this primary focus) did not consider reporting and prosecution.

Criminal law does not explicitly feature in the terms of reference for either Covid-19 public inquiry.²⁹⁷ The House of Commons Justice Committee’s inquiry on creation and enforcement of Covid-19 offences focused on England.²⁹⁸ The UK Covid-19 Inquiry report on political governance contained some discussion of law-making and policing in Scotland, but not the content or prosecution of offences.²⁹⁹ I am not aware of reports by any Scottish Parliament committee on this topic, nor any review by either COPFS or HM Inspectorate of Prosecution in Scotland.

In England and Wales, the Crown Prosecution Service reviewed all charges prosecuted under Covid-19 legislation from March 2020 to August 2021. This revealed that 21% of

²⁹⁵ Some criminal law theorists explicitly recognise this. For example: Duff, Farmer, Marshall, Renzo and Tadros (footnote 79), pg.3.

²⁹⁶ W Stuntz, “The Pathological Politics of Criminal Law” (2001) 100 Michigan Law Review 505, pg.506

²⁹⁷ UK Covid-19 Inquiry: Terms of Reference (20 July 2022) <<https://covid19.public-inquiry.uk/documents/terms-of-reference/>>. Scottish Covid-19 Inquiry: Terms of Reference (2 November 2022) <<https://www.gov.scot/publications/covid-19-inquiry/pages/terms-of-reference/>>.

²⁹⁸ House of Commons Justice Committee, “Covid-19 and the criminal law” (24 September 2021) <<https://committees.parliament.uk/publications/7439/documents/77794/default/>>.

²⁹⁹ UK Covid-19 Inquiry, “Modules 2, 2A, 2B, 2C: Core decision-making and political governance”, Volume II, Chapter 13 (20 November 2025) <https://covid19.public-inquiry.uk/wp-content/uploads/2025/11/18102920/1435-HH-E03296643_UK-Covid-19-M2-•V2-•Inquiry_Volume-II_Accessible.pdf>.

prosecutions for offences under the regulations, and 100% for offences under the Coronavirus Act 2020, had been incorrectly charged.³⁰⁰ Most of these prosecutions were commenced by the police directly without input from the CPS. As decisions on Scottish prosecutions were solely made by COPFS, fewer issues might be expected. However, no equivalent qualitative review was undertaken in Scotland.

More fundamentally, very little is known about the reasons for reporting and prosecution. The structure of the regulations contributed towards this opacity. These mostly specified a single offence encompassing each requirement. Reference to, for instance, charges under regulation 8(1) of the March 2020 regulations does not in itself reveal which requirement was engaged. Data on contraventions of different requirements (such as not to leave home) were not separately recorded. As a result, COPFS do not hold detailed information on reports and decision-making per requirement.³⁰¹ This is a significant gap.

Furthermore, each requirement could be contravened in numerous ways or for numerous reasons. The requirement, for example, not to leave home covered a range of circumstances, such as attending house parties; socialising with others outdoors; or travelling to natural “beauty spots”. Enforcement of Covid-19 regulations cannot be properly understood, or assessed, without attempting to differentiate between these.

4.3.2 Case review exercise: methodology

For these reasons, I sought permission from COPFS to undertake a comprehensive review of Covid-19 cases. I requested, and obtained:

1. A list of cases featuring charges under the Covid-19 regulations and Coronavirus Act 2020;
2. A list of cases featuring other charges with a “coronavirus” modifier;³⁰²

³⁰⁰ “Coronavirus review findings, March-August 2021” (30 September 2021) <<https://www.cps.gov.uk/cps/news/coronavirus-review-findings-march-august-2021>>. For more information, see the CPS’ written evidence to the House of Commons Justice Committee: <<https://committees.parliament.uk/writtenevidence/25697/pdf/>>.

³⁰¹ My first FOI request, requesting this, was refused as exceeding the cost limit.

³⁰² This is a marker on COPFS’ system (shown on an accused’s record, following conviction) indicating that Covid-19 was relevant to the offence’s commission. If the modifier was added consistently (see footnote 346), these lists should contain all Covid-related offending.

3. Permission to read through these cases on COPFS' case management system;
4. Permission to comment on trends in my thesis; and
5. Permission to gather more detailed statistics on the types of offence reported to the PF, decisions taken and outcomes, and to publish this "secondary data".

On being provided with the data, I accessed every case with a charge under Covid-19 legislation, looking at these by regulation and in chronological order (by date of report). I read the police report for each of these cases along with (where applicable) the relevant court minutes completed by prosecutors. I often perused other available documentation for insight into the circumstances of the allegation (such as witness statements) or reasons for decision-making (case notes, correspondence, or the report to Crown Office in a petition case).³⁰³

I sought to capture differences in the circumstances of offences by creating broad categories (such as "non-essential travel") and recording statistics on these (charges reported, marking decision and outcome). Running tallies were kept and these categories remained under review as the research progressed, being revised as necessary. In this way, I have produced spreadsheets capturing this data for each offence and showing general trends across these charges.

My initial goal of creating categories identifying reasons for decision-making (to initiate proceedings, issue direct measures or accept pleas) was abandoned as reasons were not consistently recorded by prosecutors and were often difficult to categorise usefully. Less ambitiously, where available, I have recorded the reasons provided for marking cases "no action" or discontinuing court proceedings – borrowing the terminology used in COPFS' "no action" codes.³⁰⁴

A conflict-of-interest statement is required. I am employed by COPFS as a Procurator Fiscal Depute. My LLM by research was sponsored by COPFS. No conditions have been imposed on the content of this thesis, beyond stipulating that no identifiable data should be published.

³⁰³ See footnote 286.

³⁰⁴ These are required to close a case on COPFS' systems marked "no action" or discontinued. I found these to be unreliable: the generic code ("other") was often used without elaboration, and the code selected was sometimes inconsistent with case-related documentation (which I have placed greater reliance on). Where I have not reported reasons, these were either difficult to summarise or not recorded.

To that end, I agreed a reporting threshold (8 charges) which would enable categories to be reported while minimising the risk of re-identification.³⁰⁵ A draft of this thesis was provided to COPFS' Data Protection Officer for review prior to submission for this reason.

I am grateful to COPFS for the commitment to transparency demonstrated by accommodating my request. The views expressed, and any errors, are entirely my own.

4.3.3 Case review exercise: limitations

Limitations to this research should be acknowledged. The spreadsheets were compiled manually, within a short timeframe. Some mistakes are therefore inevitable. I have been unable to reconcile some errors: one too few charges have been categorised under regulation 5(1), Local Levels regulations; one too many under regulation 8(3), the March 2020 regulations (compared to COPFS' list). The overall total is one over. Outcomes for three charges have not been noted (or lost during aggregation) in error.

There is also a degree of subjectivity involved. Another researcher might have created different categories or categorised some charges differently. Charges often spanned multiple categories. Some nuances were unavoidably obscured when grouping charges together.

This is not a scientific exercise, and the headline figures should be treated with some caution. The intention is for this to provide a means of expressing trends on reporting and prosecution – having investigated these to an extent which has not previously been attempted.

4.4 Case review exercise: results (Covid-19 legislation)

4.4.1 General observations: reports

There are 2,663 charges recorded on COPFS' systems under the regulations and the Coronavirus Act 2020.³⁰⁶ A significant majority of these involved some other criminality

³⁰⁵ While this inevitably resulted in some categories being artificially combined, I consider this a reasonable trade-off.

³⁰⁶ This is distinct from the number reported by police. Charges reported under Covid-19 legislation which were changed by the PF to a different offence did not feature on the list provided by COPFS. Charges added by the PF did. Charges are counted separately for each accused.

(often a response to police intervention). The seriousness of the accompanying offending tended to dictate the marking decision.

Only 823 charges (30.9%) featured in reports containing only offences under Covid-19 legislation. Appendix 5 contains the full table showing these charges, and outcomes, per regulation. These were much less likely to result in court proceedings, as can be illustrated using the two most reported offences.³⁰⁷

Table 1

March 2020 regulations, reg 8(1)	183	
	Petition. Not indicted.	2
	Summary complaint (Sheriff Court)	26
	Summary complaint (JP Court)	11
	Fiscal fine (£175) refused. Summary complaint (JP Court)	1
	Fiscal fine (£125) refused. Summary complaint (JP Court)	1
	Fiscal fine (£500)	2
	Fiscal fine (£325)	1
	Fiscal fine (£250)	5
	Fiscal fine (£175)	5
	Fiscal fine (£125)	26
	FF (£50). Withdrawn, no further action	1
	Fiscal fine (£50)	17
	PF Warning Letter	17
	Diversion to social work	1
	Failed social work diversion, no further action	1
	Referred to Children's Reporter	13
	No action	36
	Rolled into another case (duplicate)	17

Table 2

Local Levels regulations, reg 5(1)	439	
	Summary complaint (Sheriff Court)	32
	Summary complaint (JP Court)	2
	Fiscal fine (£400)	2
	Fiscal fine (£325)	2
	Fiscal fine (£250)	2
	Fiscal fine (£175)	5
	Fiscal fine (£125) refused. Summary complaint (JP Court)	2
	Fiscal fine (£125)	51
	Fiscal fine (£100)	4
	Fiscal fine (£50)	137
	Fiscal fine (£50). Withdrawn/ refused. Summary complaint (JP Court)	2
	Fiscal fine (£50). Withdrawn/ refused. No further action	6
	Fiscal fine (£30)	3
	PF Warning Letter	56
	PF Warning. Challenged. Marked summary (JP), no action in error	1
	Diversion to social work	29
	Failed social work diversion, summary complaint (JP Court)	2
	Failed social work diversion, no further action	14
	Referred to Children's Reporter	10
	No action - alternative charge (culpable and reckless conduct) used	4
	No action	53
	Duplicate charge - no action	5
	Rolled into another case (duplicate)	15

³⁰⁷ This is an imperfect means of illustration, as the other offences were sometimes trivial.

Only 21.3% of the charges in Table 1, and 7.7% of those in Table 2 were initially marked for court proceedings. This is compared with 340 of 820 regulation 8(1) charges (41.5%) and 386 of 1,122 regulation 5(1) charges (34.4%) generally.³⁰⁸

It is important to recognise, as noted above, that many of the charges reported were an adjunct to other offending. This challenges the premise of my discussion (seeking to infer principles underpinning criminalisation from later decision-making) by raising the possibility that these were simply another tool in the arsenal of enforcement agencies.

The strong impression conveyed by reading police reports is that police officers did not view these offences in instrumental terms. Reports were often peppered with moralistic language: decrying “selfish” or “reckless” behaviour displaying a “disregard” for public safety in the face of “sacrifices” made by the law-abiding majority. These sometimes emphasised the potential impact on the NHS (occasionally mentioning the Covid death toll), and the effect on officers personally (including the risk of passing on infection to their families).

The use of such language appears to have been most common in respect of gatherings in dwellings, and offending prosecuted as culpable and reckless conduct.³⁰⁹ While no doubt reflecting an exasperation in dealing with difficult and stressful situations, it also suggests that at least some of this offending took on a moral significance which motivated decision-making by enforcement actors.

Sometimes this was explicitly acknowledged, for example in reports stating that an alternative to reporting was not considered appropriate due to the nature of the offence. Other common reasons for reporting were more mundane: refusal to accept an FPN; problems with issuing or printing the ticket; an accused having four previous FPNs;³¹⁰ a background of complaints by neighbours; or an accused person being on bail.

³⁰⁸ Tallied using the full tables in Appendix 6 (all charges under Covid-19 legislation).

³⁰⁹ I have not attempted to gather data on this point.

³¹⁰ See Chapter 1.4.3.

4.4.2 General observations: prosecutorial decision-making

The moral register of police reports was, at times, dissonant with the restrained approach taken by the PF towards marking decisions. Alternatives to prosecutions were common – even for the most egregious breaches.

In general, prosecutors responded proportionately to offences under Covid-19 regulations. This should be commended. However, the approach taken was sometimes inconsistent, and not well-targeted towards the most obviously harmful conduct. This can be seen in a generally lenient response towards very large private gatherings, with no obvious correlation between size and likelihood of prosecution (explored at Chapter 4.4.8).

Furthermore, if the regulations were a (partial and imperfect) legal code expressing and crystallising inchoate community expectations, then the behaviour most deserving of censure was that brazenly flouting shared responsibilities. We can see, however, that some clear examples of this type – holding pub “lock-ins”, hiring Airbnbs to throw parties – either resulted in direct measures, or court proceedings which were later discontinued. Tables 3-6 below are excerpts from Appendix 7 (showing trends across regulations and the Coronavirus Act 2020).

Table 3

Licensee hosting “lock-in”/party at licensed premises³¹¹

12				
	Court	5		
			Summary complaint, discontinued (acceptable explanation offered)	1
			Summary complaint, discontinued (age of offence, witnesses not available)	1
			Summary complaint, discontinued (wrong requirement specified)	1
			Summary complaint, discontinued	2
	Direct measure	6		
			Fiscal fine (£500 - together with other charges)	1
			FF (£250). Refused. Summary complaint (JP), discontinued (acceptable explanation offered)	1
			Fiscal fine (£175)	1
			Fiscal fine (£125 - together with other charge(s))	1
			Fiscal fine (£100)	1
			Fiscal fine (£50)	1
	No action	1		
			No action - alternative charge (culpable and reckless conduct) used	1

³¹¹ Unless otherwise stated, court action was taken in the Sheriff Court. Low maximum penalties aside, this forum was normally selected – including for cases involving only Covid-19 offences. The reasons for this are unclear. Prosecutors may have considered that the novelty of the regulations made determinations by a legally-qualified Sheriff more appropriate than a lay Justice of the Peace. Alternatively, this may have been due to the public’s interest and stake in such offending.

Discontinuations were a common thread. This possibly reflects the extreme pressure on summary court business due to the court backlog (exacerbated by Covid-19), and the subsequent need for prioritisation.³¹² Non-imprisonable offences coming to trial months after the strictest regulations had been revoked may have been expendable.³¹³

Another possibility (also relevant to accepting pleas) is that the norms which developed faded as quickly as these had emerged, as society reopened and the public sought to “move on”. If the sole remaining reason to prosecute was deterrence, then this justification weakened as restrictions eased.

Table 4

Book holiday let and organise party/host party at holiday home

10				
	Court	1		
			Summary complaint, NG plea accepted, PG to other charge(s)	1
	Direct measure	5		
			Fiscal fine (£400)	1
			Fiscal fine (£175)	2
			Fiscal fine (£125)	1
			Fiscal fine (£50)	1
	No action	4		
			No action (reporting delay)	2
			No action	2

Table 5 is included as police were sometimes unable to ascertain who had booked the accommodation. Most of these charges came from a small number of cases.

Table 5

Attend indoor social gathering/party at holiday rental accommodation

24				
	Court	2		
			Summary complaint, NG accepted, PG to other charges	2
	Direct measure	22		
			Fiscal fine (£325)	1
			Fiscal fine (£50)	4
			Fiscal fine (£50). Accused untraced. Withdrawn. No further action.	2
			PF Warning Letter	15

These likely involved more planning than gathering in another person’s home. Nonetheless, there were relatively few of these charges and court proceedings were no more likely.

Prosecution was more common (and few direct measures were issued) for another example of obviously dangerous, and possibly wrongful, conduct: failure to self-isolate. Even then,

³¹² Audit Scotland report (footnote 83), pg.26-30.

³¹³ Interviews with prosecutors (which were not pursued due to time constraints) might provide some insight.

around two-thirds of the charges marked for court proceedings were ultimately not proceeded with or resulted in Not Guilty pleas being accepted.

Table 6

Fail to self-isolate after positive test/while symptomatic/in close contact with infected person³¹⁴

74				
	Court	30		
			Petition. PG by s76 indictment	1
			Indicted. NG plea accepted, PG to other charge(s)	1
			Summary complaint, PG	4
			Summary complaint, NG plea accepted, PG to other charge(s)	10
			Summary complaint - outcome not recorded (researcher's error)	1
			Summary complaint, discontinued (failed service)	1
			Summary complaint, discontinued	2
			Summary complaint (JP court), NG plea accepted, PG to other charge(s)	1
			Petition, not indicted on this charge (PG by s76 to other charges)	1
			Petition, not indicted on this charge (insufficient evidence)	2
			Petition, not indicted on this charge	6
	Direct measure	5		
			Fiscal fine (£125)	1
			Fiscal fine (£50)	3
			PF Warning Letter	1
	Diversion	6		
			Failed social work diversion, no further action	1
			Referred to Children's Reporter	5
	No action	26		
			No action (accused serving prison sentence)	1
			No action (further action disproportionate)	4
			No action (not a crime)	1
			No action (insufficient evidence on more serious charge)	1
			No action (insufficient evidence)	1
			No action (evidential issues)	1
			No action (age of offence)	1
			No action - alternative charge (culpable and reckless conduct) used	1
			No action - alternative charge (section 38) used	1
			No action	14
	Duplicate	7		
			Duplicate - no action	1
			Rolled into another case	6

As noted at Chapter 2.3.4, this was a “model” Covid-19 offence. It was, however, never explicitly criminalised under the regulations.³¹⁵ During periods where a general stay-at-home

³¹⁴ A “s76 indictment” enables an accused to plead guilty, in terms acceptable to the prosecutor, following appearance on petition but before service of the indictment.

³¹⁵ Outwith the context of international travel or Schedule 21 to the Coronavirus Act 2020. See Chapter 1.4.1. Tables 45-47 and 50 show culpable and reckless conduct charges of this type.

requirement was in force, a positive test result (or symptoms or contact with an infected person) would arguably have restricted the circumstances in which a “reasonable excuse” was available. However, at least 45 of these charges did not coincide with these periods.³¹⁶

Confusion over what conduct was criminal at any given time was a recurring theme. Unlike other categories, this cannot be readily explained by frequent shifts in the law. It may instead reflect an assumption that this conduct *must* have been criminal, given the risk of harm and well-established civic expectations, as reinforced through government messaging.

This relationship between use of these offences and their justification is a topic to which I will return, as I explore charges relating to specific regulations. Before doing so, some background requires explanation.

Crown Office styles³¹⁷ for most charges under Covid-19 regulations required manual input of the specific requirement contravened. This was rarely done – and charges often simply repeated the regulation containing the offence (and sometimes regulations which did not exist). This improved with the Local Levels regulations, where the relevant Schedule (for each tier) was usually identified.

Moreover, the free text in the draft police charge, specifying the allegation, would often contain averments like “and fail to comply with coronavirus regulations”. This was not always changed in the final charge on a complaint or indictment. It was also common for the free text to specify behaviour without reference to the specific requirement contravened. A common example was “did make a non-essential journey”. There were, at times, restrictions on leaving home or on crossing local authority (or national) boundaries. However, making a “non-essential journey” did not always contravene those prohibitions and does not reflect their terms.

Leaving aside whether these practices provided accused persons with fair notice of the allegations, this made categorising charges more difficult. Where this uncertainty was present (or the charge included, or solely alleged, non-prohibited conduct) but the behaviour disclosed would have contravened a requirement then I have categorised this accordingly. If the relevant requirement was not specified (including where multiple were contravened), I

³¹⁶ In error, I have not recorded this for charges in Table 11. I was able to revisit some (included in the 45, where applicable) but not all of these, given time constraints.

³¹⁷ All crimes on COPFS' systems have template charges, with some text which cannot be edited and other parts where free text can be inputted.

have tried to infer the principal basis on which the charge was brought and record this accordingly.

4.4.3 The March 2020 regulations

466 of 820 charges under regulation 8(1) alleged contraventions of the stay-at-home requirement. I have categorised these as follows.³¹⁸

Table 7³¹⁹

466		
	Being outside while committing crime(s) of dishonesty	33
	Vulnerable young adult leaving care home/ children's unit (regular abscondee/missing person)	29
	Leaving home for non-essential purpose - e.g. fishing, driving for leisure, unnecessary purchases, buying drugs	26
	Repeatedly seen by police outside of home address	26
	Drinking in the street	25
	Being outside in breach of curfew (bail or undertaking) conditions - including 20+ hour curfews	23
	Non-essential travel: "unnecessary" distance from home address	22
	Behaving in disorderly manner in public	21
	Travelling to "natural beauty spot" / scenic location	17
	Drunk and incapable alone in public	17
	Attend at another person's address to confront/menace/ harass them	16
	Attend gathering (unspecified number) at another person's address	16
	Attend gathering (3 to 5 people) at another person's address	16
	In a vehicle with others while in possession of/ taking drugs	16
	Committing other road traffic offences (than driving under influence/ failure to provide)	16
	Behaving suspiciously in public (no charge for prior behaviour)	14
	In company of one other person at another address	13
	Causing a disturbance or behaving in threatening manner on a residential street	13
	Minor public nuisance: e.g. begging / approaching members of the public / filming them/ taking drugs in street	12
	Attend gathering (6 to "around 30" people) at another person's address	10
	Outside of home while committing other serious crime - e.g. violence, in possession of weapons, drug supply	10
	Domestic abuse: harassment/ attending ex-partner's address to menace them/ in breach of court order	10
	Failing to self-isolate having tested positive/ displaying symptoms	9
	Driving under the influence/ failure to provide a sample	9
	Domestic abuse offence while in company of partner/ex-partner	<8
	Gathering with another/ others in public	<8
	Staying in same public place for "unreasonable" length of time/ entering public park	<8
	Enter another person's home/ outbuilding without their permission (not with intent to steal)	<8
	Other	27

³¹⁸ For Tables 7, and 9-13, Appendix 6 shows the full table, including outcomes, with categories grouped thematically. As the motivation for an accused being outside was not always known (or reliably reported by them), I have mostly captured the surrounding circumstances.

³¹⁹ Regarding "20+ hour curfews": accused were sometimes released on police undertakings (Criminal Justice (Scotland) Act 2016, section 26) with these conditions, breach of which was an imprisonable offence. Conditions also sometimes mirrored public health guidance (stricter than Covid-19 regulations). Further research would be required to ascertain the extent of this practice (which was abandoned by late 2020).

A minority of these involved apparently standalone contraventions of Covid-19 regulations.³²⁰ Many charges were connected to, and unlikely to have been reported but for other criminality. It is notable that much of this offending was quite remote from the risk of individual harm. Only nine charges involved failure to self-isolate – maybe the paradigmatic example of a potentially harmful “Covid breach”.

Enforcement was frequently linked to maintaining public order (or addressing other social problems) during this crisis. Concerns surrounding non-essential public activities and travel also appear to have been particularly relevant. Travel-related categories are probably undercounted, given significant overlap with road traffic and public order offences (amongst others).

Private gatherings were also a focus of enforcement (and remained so throughout). While hosting a party in one’s own home was not prohibited at this stage (as noted in Chapter 1.4.1), several regulation 8(1) charges were reported on this basis (see Table 10). The table below shows that private gatherings resulting in “leave home” charges were often small.³²¹

³²⁰ This is not to say that, for instance, all “non-essential travel” charges involved no other offending.

³²¹ All head counts for gatherings throughout this chapter include the accused and, unless otherwise stated, were on a single occasion.

Table 8

In company of one other person at another address	13			
	Court	3		
			Summary complaint, PG	2
			Summary complaint, discontinued (witness engagement)	1
	Direct measure	8		
			Fiscal fine (£250 - together with other charge(s))	1
			Fiscal fine (£175)	1
			Fiscal fine (£125 - together with other charge(s))	1
			Fiscal fine (£125)	1
			Fiscal fine (£50)	4
	No action	1		
			No action (further action disproportionate)	1
	Duplicate	1		
			Rolled into another case	1
Attend gathering (unspecified number) at another person's address	16			
	Court	8		
			Summary complaint, PG	1
			Summary complaint, NG plea accepted, PG to other charge(s)	1
			Summary complaint. Not Proven verdict after trial	1
			Summary complaint, discontinued (accused deceased)	2
			Summary complaint, discontinued (accused in prison)	2
			Petition, not indicted on this charge (PG by s76 indictment)	1
	Direct measure	7		
			Fiscal fine (£500)	1
			Fiscal fine (£325 - together with other charge(s))	1
			Fiscal fine (£175 - together with other charge(s))	1
			Fiscal fine (£125 - together with other charge(s))	1
			Fiscal fine (£50)	3
	No action	1		
			No action (age, good behaviour, no previous convictions)	1
Attend gathering (3 to 5 people) at another person's address	16			
	Court	9		
			Summary complaint, PG	6
			Summary complaint, Found Guilty after trial	1
			Summary complaint, NG plea accepted, PG to other charge(s)	1
			Petition, not indicted on this charge	1
	Direct measure	3		
			Fiscal fine (£125)	3
	No action	4		
			No action (reporting delay)	1
			No action	3
Attend gathering (6 to "around 30" people) at another person's address	10			
	Court	4		
			Indicted, PG	3
			Summary complaint, NG plea accepted, PG to other charge(s)	1
	Direct measure	4		
			Fiscal fine (£50)	4
	No action	2		
			No action	2

For subsequent regulations, I stopped recording size of gatherings attended. This was due to time constraints and because these appeared to be uncorrelated with the likelihood of court proceedings (though the data presented is inconclusive on that point).³²² I continued recording size of gathering where the accused was the host, as these were generally treated more seriously by police. It was not uncommon for only the host to be reported – suggesting that they were considered more culpable.

The following table shows charges for the remaining requirements.

³²² One possible exception was socialising with one other person in their home (Table 8 shows fewer prosecutions). There were relatively few of these charges (or charges for hosting one other person) reported under subsequent regulations.

Table 9

Reg 5 and 6 - leave home and gather in public	39		
		Part of group in public in possession of a weapon/ weapons	21
		Group travelling for non-essential purpose	8
		Other	10
Reg 6 - gather in public	34		
		In public drinking/taking drugs with others	12
		Other	22
Reg 3 and 4 - carry on a non-essential business	4		
		Other	4
Reg 6B - fail to wear face covering in shop	1		
		Other	1
Reg 6ZA - attend party (16 or more people) in private dwelling	4		
		Other	4
Regulation 7(6) - direction to adult responsible for child	2		
		Other	2
Alleged contravention of r8(3) - mistakenly labelled as r8(1)	27		
		Fail to comply with police direction to return home	24
		Other	3

The preponderance of regulation 5 charges may not be surprising, given its breadth. One might have expected a higher number of charges involving regulation 6, which remained in force for two months longer. Restrictions on public gatherings, however, comprised a relatively small share of charges across all regulations (see Tables 22-26 below).

Two charges were in “sensitive”³²³ or inaccessible cases. The remainder (Tables 10 and 11) involved behaviour which was incorrectly charged.

Table 10

Did not contravene regulations in force at the time

61		
	Host social gathering/ party in private dwelling / allow another person into your home	25
	Attend gathering in another person's address (after reg 5 revoked/ less than 16 people present)	14
	Fail to maintain physical distancing (at least 2m)/ other behaviour perceived as "risky"	12
	In public with one other person from another household	9
	Other	1

Charges in Table 10 alleged conduct which was not criminalised by the regulations in force at the relevant time (including conduct which was never prohibited). Court proceedings were raised for 19 of these 61 charges. Four resulted in a conviction. 11 direct measures were issued (all uncontested). In several cases, hosting gatherings was reported as culpable and reckless conduct and then (incorrectly) changed by the PF.

³²³ Meaning that access is restricted.

The two reported categories not involving private gatherings were probably attributable to the conflation of law and guidance.³²⁴

Table 11

Regulation(s) no longer in force

180		
	Attend indoor gathering at dwelling (prohibited under level 3/ 4 restrictions)	39
	Enter or leave level 3 or 4 area/ enter Scotland	22
	Leave or remain outside of home address	17
	Host a gathering (3 -5 people in total) - indoor gatherings in dwellings prohibited	15
	Host a gathering (6-10 people in total) - indoor gatherings in dwellings prohibited	12
	Fail to self-isolate while claiming to have covid/symptoms/ to have tested positive	11
	Failing to self-isolate on receipt of a positive test/ while symptomatic/ after close contact tested positive	11
	Attend gathering in indoor/outdoor public place	11
	Host a gathering/party in dwelling (unspecified number present) - indoor gatherings in dwellings prohibited	8
	Host a party (16-20 people present) - indoor gatherings in dwellings prohibited	8
	Other	26

Table 11 shows charges with offence dates after this set of regulations had been revoked.

Many, though not all, of these captured conduct which was prohibited and so could have been correctly charged under other regulations. These errors may be (at least partially) attributable to oft-changing regulations. Publicly available resources might not always have kept pace. Whatever the explanation, unchallenged direct measures were issued for 63 charges and 47 proceeded in court (resulting in nine guilty pleas).

Issues in identifying the correct charge could also be seen with regulation 8(3). There were otherwise few surprises with these and regulation 8(2) charges.

Table 12

Charges under regulation 8(2)

16			
	Obstruct person carrying out a function under regulations	15	
		Resist police attempts to disperse party at gathering/ delay or refuse to allow access for that purpose	13
		Other	2
	Regulations no longer in force	1	
		Refuse to allow police access to disperse a party	1

³²⁴ See T Hickman, "The Use and Misuse of Guidance during the UK's Coronavirus Lockdown" (2020), SSRN: <<http://dx.doi.org/10.2139/ssrn.3686857>>.

Table 13*Charges under regulation 8(3)*³²⁵

76			
Fail to comply with reasonable instruction/ etc	32		
		Fail to comply with police direction to return home - while in public	15
		Fail to comply with police direction to return home - gathering in dwelling	12
		Other	5
Alleged contravention of r8(1)	37		
		Leave home without reasonable excuse	27
		Other	10
Alleged contravention of r8(2)	1		
		Other	1
Not criminal under regulations in force at time	3		
		Other	3
Regulation(s) no longer in force	4		
		Other	4

37 of these would have been better proceeded with under regulation 8(1), as the charge's free text specified behaviour contravening that offence only. As arrest was a last resort, considerable overlap between these two offences was inevitable: accused would often have contravened both regulations 8(1) and 8(3).

The concerns (noted in Chapter 1.3.4) that criminal liability could attach to practically unrestrained orders made by police officers mostly did not materialise. Charges properly brought under regulation 8(3) and its successors (which I will not examine separately) mainly involved requirements to disperse or return home.

4.4.4 The September 2020 and Additional Temporary Measures regulations

As noted in Chapter 1.2, the September 2020 regulations contained the first effective restrictions on gatherings in private dwellings. These, and the Additional Temporary Measures regulations, represented a decisive shift towards household gatherings as the focus of enforcement.

³²⁵ This does not tally. See Chapter 4.3.3.

Table 14*Charges under regulation 15(1), September 2020 regulations*

93			
	Curfew for cafes, bars, restaurants (regulation 6A)	1	
		Other	1
	Gather in public place (max 6 from 2) (regulation 8)	1	
		Other	1
	Gather indoors at dwelling (reg 9)*	24	
	*max 6 from 2 then prohibited	Attend social gathering (of at least 3 people) indoors at dwelling	14
		Host social gathering (3 to "around 30" people present) indoors at dwelling	9
		Other	1
	Alleged contravention of reg 15(2) - obstruction	2	
		Other	2
	Regulation(s) no longer in force	61	
		Restrictions on movement: enter level 4 area/ enter Scotland/ leave or remain outwith home address	14
		Host/ attend gathering indoors (3 or more present) at dwelling - indoor gatherings in dwellings prohibited	27
		Allow one other person into your address/ gathering with one other person at their address	10
		Other	10
	Did not contravene regulations in force at time	3	
		Other	3
	Not known - sensitive case	1	
		Not known	1

Table 15*Charges under regulation 26(1), Additional Temporary Measures regulations*

158			
	Public indoor gathering (protected area) exceeding max (reg 11)	1	
		Other	1
	Curfew on licensed premises/ supply alcohol indoors (outside protected area) (regs 12-14)	4	
		Other	1
	Attend gathering in dwelling - reg 20 (indoor gatherings in dwellings prohibited)	48	
		Attend gathering indoors at private dwelling (no. not specified)	27
		Host gathering/party at dwelling/ allow another person into your address	21
	Alleged contravention of r23(3)	1	
		Other	1
	Incorrect charge used - should have been r9, International Travel regulations	1	
		Other	1
	Regulations no longer in force - should have been reg 5(1), Local Levels regulations	65	
		Leave or remain outwith home address	10
		Leave level 4/ enter level 3 area	14
		Attend gathering at dwelling (level 3/4 restrictions) - prohibited	22
		Host gathering/ allow another person into dwelling (level 2-4 restrictions) - prohibited	10
		Other	9
	Did not contravene regulations in force at time	5	
		Other	5
	Not known - sensitive case	33	
		n/a	33

Where correctly charged, most of these charges were for hosting or attending gatherings. However, a high percentage of these two regulations were incorrectly charged (in that the offence had been revoked). That these sets of regulations co-existed may have caused confusion. However, more than half of the 61 charges in Table 14 occurred after both had been revoked.

4.4.5 The Local Levels regulations

A plurality of charges under Covid-19 legislation were under regulation 5(1), the Local Levels regulations. Most of these alleged contraventions of “level 4” restrictions. Most also related to private gatherings.

Table 16

Charges under regulation 5(1), Local Levels regulations

1121			
	Fail to wear face covering on public transport	3	
		n/a	3
	Fail to wear face covering in certain indoor places	9	
		n/a	9
	Fail to close licensed selling alcohol only	4	
		Other	4
	Restrictions on licensed premises	10	
		Other	10
	Fail to close close-contact service	1	
		Other	1
	Leave home (level 4 restrictions)	78	
		Gathering in indoor/ outdoor public place	11
		Public disorder/ public nuisance (including drunkenness and drug possession)	13
		Driving under the influence / committing other road traffic offence(s)	12
		Committing other offences - e.g. domestic abuse/ possession of a knife/ crime(s) of dishonesty/ dealing drugs	12
		Non-essential or unknown reason - e.g. gathering in dwelling, fishing, exploring abandoned buildings	16
		Other	14
	Enter Scotland (schedule 7A)	42	
		Social/ family gathering during festive period	14
		Non-essential reason - e.g. holiday, claim to be visiting friend/ family member/ unnecessary purchase	13
		Other criminality - e.g. crimes of dishonesty, supply of drugs, possession of a knife	10
		Other	5
	Leave or enter level 3 or 4 area	144	
		Non-essential or unknown reason - e.g. driving for leisure, to "beauty spot", driving another person to gathering	48
		Public disorder/ nuisance (including drunkenness)	14
		Drink driving / other road traffic offence(s)	18
		Attend another person's address uninvited to harass/ confront them (including domestic abuse)	11
		In public place in possession of drugs	13
		Other criminality - e.g. crimes of dishonesty, supply of drugs, possession of a knife	19
		Participate in gathering in indoor/outdoor public place	10
		Other	11
	Participate in public outdoor gatherings (level 4)	40	
		Social gathering (group of 8 or less) - including travelling for recreation	20
		Social gathering (15 or more/described as "large group")	<8
		Participate in a protest	<8
		Other	6
	Restrictions on indoor public gatherings (level 4)	15	
		Other	15
	Participate in indoor gathering in private dwelling (level 4)	605	
		Attend an indoor social gathering of more than 2 in another person's address	268
		Gather with another person socially in their address / attend at their address	25
		Host indoor social gathering in dwelling (number not known/ not specified)	16
		Host indoor social gathering in dwelling (3 people/ "at least 3" present in total)	47
		Host indoor social gathering in dwelling (4 people present in total)	49
		Host an indoor social gathering in dwelling (5 people present in total)	12
		Host an indoor social gathering in dwelling (6 people/ "at least 6" present in total)	21
		Host an indoor social gathering in dwelling (7 people/ "at least 7" present in total)	20
		Host an indoor social gathering in dwelling (8 to 9 people present in total)	14
		Host indoor social gathering in dwelling (10 people / "at least 10" / "around 10" present in total)	12
		Host indoor social gathering in dwelling (11 to "more than 15" people present in total)	28
		Host indoor social gathering in private dwelling (20 people/ "around 20" / more than 20 present in total)	10
		Host indoor social gathering in private dwelling (around 30 to 40 people present in total)	10
		Allow one other person into private dwelling	14
		Attend post-wedding party/ wake (15 to 25 people)	8
		Attend indoor social gathering at Airbnb / holiday rental accommodation	19
		Force entry/ gain access to dwelling without permission and gather there socially	12
		Attend outdoor gathering at private dwelling (5-15 people present in total) - max: 2/4 from 2 households	<8
		Gathering for a criminal purpose	<8
		Other	7
	Level 3 restrictions	101	
		Participate in outdoor gathering in public place - disorder/ protest	8
		Host/attend social gathering in indoor public place (9-10 present in total) - max: 4/6 people from 2 households	10
		Attend indoor social gathering in private dwelling	38
		Host an indoor social gathering in private dwelling (3 to 5 people present in total)	16
		Host an indoor social gathering in dwelling (6 people to "more than 10" present)	14
		Other gatherings in dwellings, including more than 15, outdoors or in holiday rental accommodation	14
		Other	1
	Level 2 restrictions	30	
		Participate in gathering in indoor/ outdoor public place	<8
		Attend an indoor gathering in private dwelling (indoor gatherings prohibited)	11
		Host an indoor social gathering in dwelling	10
		Other	<8
	Level 1 restrictions	12	
		Host/attend indoor social gathering in dwelling/ outbuilding (indoor gatherings prohibited)	12
	Level 0 restrictions	1	
		Other	1
	Not known - sensitive case	11	
		Not known - sensitive case	11
	Alleged contravention of reg 5(3)	3	
		Other	3
	Regulation(s) no longer in force	1	
		Other	1
	Did not contravene regulations in force at time	10	
		Other	10

The typical case had police attending a residence following a report of a gathering or noise complaint and the accused either behaving aggressively towards the police, providing false details or refusing an FPN. Hosting was more likely than attendance to result in reporting but not in prosecution. Accused persons who hosted even very large private gatherings usually received direct measures.³²⁶ By around March 2021, the consistent disposal for most adults (absent previous breaches, or other significant offending during the same incident) was a £50 fiscal fine. Referrals to Social Work or the Children’s Reporter were normally made for young adults and children respectively.

I will return to trends on private gatherings below. It is sufficient to note here that five or fewer people were present for 122 of the 253 (reportable) charges where the accused hosted (48.2%). 177 of these (70%) involved fewer than 10 people.

Restrictions on movement were the second-largest contributor. Crossing local authority boundaries resulted in far more charges than leaving home.³²⁷ Notwithstanding concerns regarding enforceability,³²⁸ there were numerous charges for entering Scotland. Travel from “Covid hotspots” was a concern throughout, underpinning long-standing guidance to “stay local”. By the Local Levels regulations, this preventative rationale was embodied in relatively simple rules: not to enter (or leave) level 3 or 4 areas. As most of mainland Scotland was in level 3 or 4 restrictions from commencement of these regulations until May 2021, working out how to comply with this restriction was less burdensome than it might appear.

Accordingly, this requirement could be contravened by travelling between two areas with similar infection rates (including short distances into neighbouring council areas). The risk of local epidemics spreading due to the accused’s behaviour was often low. Instead, as Table 16 shows, travel restriction and “leave home” charges mostly covered similar conduct. The former effectively operated as an alternative to, and aggravated version of the latter. This conduct, if widely practiced, risked increasing transmission generally. For many examples,

³²⁶ See relevant tables in Appendix 6, and Tables 31-33 (excerpt from Appendix 7, general trends).

³²⁷ This was also seemingly a common reason for FPNs being issued: “Covid in Scotland: Police issue record number of travel fines” (19 January 2021) <<https://www.bbc.co.uk/news/uk-scotland-55721447>>.

³²⁸ Footnote 40.

however (such as “drink driving/other road traffic offence(s)” charges), it is doubtful that these could satisfy the “high culpability” principle advocated by Husak and Yaffe.³²⁹ For the “purest” (and largest) category of travel restriction charges, prosecution was the most common outcome.

Table 17

Non-essential or unknown reason – e.g. driving for leisure, to “natural beauty spot”, driving another person to social gathering

48				
	Court	17		
			Summary complaint, PG	6
			Summary complaint, NG plea accepted, PG to other charge(s)	5
			Summary complaint, discontinued (serving prison sentence)	1
			Summary complaint, discontinued (accused deceased)	1
			Summary complaint, discontinued (insufficient evidence)	2
			Summary complaint (JP Court), PG	2
	Direct measure	12		
			Fiscal fine (£250 - together with other charge(s))	1
			Fiscal fine (£175 - together with other charge(s))	1
			Fiscal fine (£125 - together with other charge(s))	1
			Fiscal fine (£50)	7
			PF Warning Letter. Challenged. Marked for summary complaint (JP), but not actioned	1
			PF Warning Letter	1
	No action	7		
			No action - alternative charge (culpable and reckless conduct) used	1
			No action (further action disproportionate)	1
			No action	5
	Duplicate	12		
			Duplicate - no action	2
			Rolled into another case	10

Additional harms-based arguments might distinguish this conduct from leaving home. Accused persons sometimes travelled by public transport, unnecessarily increasing close contacts. Persons from different areas interacting could create wider networks of potential carriers and could also make contact tracing (where necessary) more difficult. However, these factors were not always present. It does not explain why so many more of these charges were reported (even while both restrictions were in force), including some examples within Table 17 where an increased connection with harm was not obvious.

³²⁹ See Chapter 2.3.4.

The better explanation for these enforcement practices may be that travelling unnecessarily was simply regarded as, generally, more culpable.³³⁰ Travel restrictions codified frequently reiterated public health expectations by imposing straightforward requirements to reduce transmission (at times, in lieu of a wider, stay-at-home requirement). The greater effort (usually) required to contravene these was perhaps more deserving of condemnation.

4.4.6 The Coronavirus Act 2020

As detailed in Chapter 1.4.1, Schedule 21 to the Coronavirus Act 2020 invested significant powers in public health officers in respect of potentially-infectious persons, including to require them to quarantine. Paragraph 45(1)(a) of Schedule 21 made it an offence to fail to comply with an order imposed using these powers. Paragraph 45(1)(e) made it an offence to obstruct officials exercising their related enforcement powers.

Almost none of the 37 charges under paragraph 45(1)(a) involved the circumstances envisaged by this legislation.³³¹

Table 18

Fail to comply with direction/etc by public health officer/ police constable/etc.	1		
	Other		1
Incorrect charge - should have been "main" regulations in force at time	22		
	Fail to comply with direction by police officer to return home/ disperse gathering		10
	Other		12
Did not contravene regulations in force at time	14		
	Fail to self-isolate while claiming to have tested positive/have symptoms/ close contact claiming to have symptoms		8
	Other		6

Each of the three charges under paragraph 45(1)(e) were also incorrectly charged (albeit no action was taken on all three). The same issues occurred with charges under Schedule 22, paragraph 21(1). This was a special capacity offence, relating to conditions which could be imposed by the Scottish Ministers on occupiers of premises, or any person responsible for holding or organising an event or managing entry.

³³⁰ This might explain the higher incidence of reporting but similar percentage of reported charges prosecuted (around 52% of leave home charges; 51% for travel restrictions within Scotland). Alternatively, prosecutors may have taken a different view from police. Interviews might have provided some insight here.

³³¹ One charge *might* have done – this was unclear due to difficulty in ascertaining who qualified as a “public health officer”.

None of the 45 charges related to persons acting in these capacities. Instead, they mostly involved hosting or attending gatherings in dwellings. 39 of these would have been criminal under other regulations.

Table 19

45			
	Incorrect charge - should have been r8(1) or 8(3), March 2020 regs	1	
		Other	1
	Incorrect charge - should have been r15(1), September 2020 regs	2	
		Other	2
	Incorrect charge - should have been r5(1), Local Levels regs	36	
		Host/attend a social gathering indoors/ outdoors at dwelling, including holiday lets	34
		Other	2
	Did not contravene regulations in force at time	6	
		Other	6

27 of the charges incorrectly labelled under the Coronavirus Act 2020 resulted in court proceedings. 11 resulted in conviction. For 37 of these, unchallenged direct measures were issued.

4.4.7 Directions by Local Authorities regulations

The Directions by Local Authorities regulations empowered councils to give directions imposing conditions on specified premises, events or outdoor public places. Regulations 12(1) and 12(2)(a) created special capacity offences: contravening such a direction; and for the owner, occupier or person responsible for land in a public outdoor space failing to take steps to restrict access, following a direction. The offence in regulation 12(2)(b) applied to anyone accessing restricted public outdoor spaces. Regulation 12(3) made it an offence to fail to comply with related enforcement powers.

None of the special capacity offences involved persons acting in these capacities, and almost none of the remaining charges related to these directions, notices or enforcement of same.³³² Instead, these mostly involved household gatherings and restrictions on movement.

³³² One regulation 12(3) charge might have. I was unable to find a public record of directions issued by local authorities or prohibition notices by their officers.

Table 20
Charges under regulation 12(1)

122			
	Incorrect charge used - should have been r8(1), March 2020 regulations	1	
		Other	1
	Incorrect charge used - should have been r26(1), Additional Temporary Measures regs	3	
		Other	3
	Incorrect charge used - should have been r5(1), Local Levels regs	114	
		Attend gathering at private dwelling - indoor gatherings at dwellings prohibited	20
		Travel restrictions: leave or enter level 3/4 area, or enter Scotland	25
		Leave or remain outside of home address	11
		Attend gathering in outdoor public place	10
		Meet indoors for criminal purpose (dealing drugs) - indoor gatherings prohibited	10
		Host indoor social gathering/ party at private dwelling (3 or more people present)	19
		Other	19
	Did not contravene regulations in force at time	4	
		Other	4

Table 21
Charges under regulation 12(3)

46			
	Other	1	
		Other	1
	Incorrect charge - should have been reg15(1) or (3), September 2020 regulations	2	
		Other	2
	Incorrect charge used - should have been r26(1), Additional Temporary Measures regs	3	
		Other	3
	Incorrect charge - should have been reg 5(1), Local Levels regulations	28	
		Host/attend social gathering indoors at private dwelling - indoor gatherings prohibited	15
		Restrictions on movement - leave home/ enter Scotland/ enter level 4 area	9
		Other	4
	Incorrect charge used - should have been regulation 5(3), Local Levels regulations	9	
		Other	9
	Did not contravene regulations in force at time	3	
		Other	3

Similarly, the 10 charges under regulations 12(2)(a) and (b) alleged contraventions of the March 2020 or Local Levels regulations. 47 of the incorrect charges under the relevant regulations proceeded in court, and four resulted in conviction. Direct measures were issued (and unchallenged) for 37 such charges.

Across all offences surveyed, prosecutors often struggled to identify which conduct was criminal and tie this to the correct legislation. I estimate that, in total, 40 such charges resulted in a conviction and 175 in unchallenged direct measures. This amounts to around 15% of all convictions, and 20.9% of direct measures. Some, but not all, of these could have been correctly charged under other regulations, or at common law. This total also includes 21 charges (resulting in one conviction and 20 direct measures) where the offence used could have applied, but the free text of the charge alleged a different offence. Details are contained in Appendix 6.

Further inquiry would be required to investigate the reasons for these errors. Most charges alleging conduct not criminalised by Covid-19 legislation involved private gatherings or failure to self-isolate. Both carried an obvious risk of transmission and were consistently

discouraged through government messaging, which may have influenced assumptions regarding their legal status.

More generally, frequent changes in the law, confusion with guidance and inaccessibility of delegated legislation might all have contributed towards these issues but cannot fully explain them.

While this is an important finding, it does not reveal why different types of offending were taken more seriously. To consider this, I will look at some trends across these offences.³³³

4.4.8 General trends across Covid-19 legislation charges

More than 1,000 charges across Covid-19 legislation were for hosting or attending social gatherings in dwellings. Some other common or notable categories are shown below.³³⁴

Table 22

Fail to wear a face covering in specified indoor premises/ on public transport	32
Fail to self-isolate after positive test/ while symptomatic/ in close contact with infected person	74
Fail to self-isolate at home/ quarantine in hotel following international travel	46
Fail to maintain physical distancing/ other behaviour perceived as "risky" (e.g. touching surfaces/spitting)	15
Leave home* (<i>*excluding charges counted under other categories listed</i>)	472
"Non-essential" travel/ contravening travel restrictions* (<i>*excluding outdoor gatherings/protest/football-related disorder</i>)	240
Enter or leave Scotland	47
Gather in public with one other person from a different household	14
Organise/ participate in (or travel to) protest / refuse to comply with police direction to disperse from protest	35
Football-related public disorder/ offending	23
Participate in social/ other public outdoor gathering (3 to 9 people)	25
Participate in social/ other public outdoor gathering ("10 to 15" to "more than 200" people)	16
Attend social gathering/ party at indoor public place (including in hotels, "raves" and pub "lock-ins") (excluding cars)	32
Book holiday let and organise party/ host party at holiday home	10
Attend indoor social gathering/ party at holiday rental accommodation	24
Attend post-wedding party/ wake/ public commemoration	13
Licensee hosting "lock in"/ party at licensed premises	12
Other restrictions on hospitality/ licensed premises - serving alcohol or food/ curfew	11

The most common circumstances (private gatherings aside) were leaving home, non-essential travel and failure to self-isolate.

³³³ This includes other regulations (not considered above) for which there were charges: the Aberdeen City, August 2021, and International Travel regulations. There were so few charges for the first two of these (one and 13 respectively) that there is little to say. Most of the 55 charges under the latter were for failing to self-isolate.

³³⁴ All tables in this section are from Appendix 7.

Despite some evidence that few FPNs were issued for face covering requirements (at least, on trains),³³⁵ several charges resulted. More than half of these were prosecuted, often alongside disorder or shoplifting.

Given the evident concern over disorder (also noted relative to Table 7), public outdoor gatherings formed a smaller than expected share. A strict approach was taken to the (relatively small number of) protest charges – subject to the nuanced analysis often undertaken, following *Leigh & others*.³³⁶

Table 23

Organise/participate in (or travel to) protest /refuse to comply with police direction to disperse from protest

35				
	Court	28		
			Indicted. Discontinued (not criminal)	2
			Summary complaint, PG	4
			Summary complaint. Found Guilty after trial	2
			Summary complaint, Found Guilty after trial. Granted absolute discharge (no conviction)	1
			Summary complaint, NG plea accepted, PG to other charge(s)	4
			Summary complaint, Found Not Guilty after trial	1
			Summary complaint, withdrawn at trial (Found Not Guilty)	2
			Summary complaint, discontinued (wrong regulations)	1
			Summary complaint, discontinued (age of offence, witnesses not available)	1
			Summary complaint, discontinued (insufficient evidence)	4
			Summary complaint, discontinued	6
	Direct measure	4		
			Fiscal fine (£125 - together with other charge(s))	3
			PF Warning Letter	1
	No action	3		
			No action	3

Football-related disorder was also normally prosecuted. Unlike protest activity, this necessarily featured other offending. Local considerations may have been a factor, as these almost exclusively involved Glasgow clubs.

³³⁵ “Covid-19: Fewer than 0.1% fined for no masks on trains”, BBC News (26 September 2020) <<https://www.bbc.co.uk/news/uk-england-54295612>>.

³³⁶ See Chapter 1.4.2.

Table 24
Football-related public disorder/offending

23				
	Court	20		
			Summary complaint, Found Guilty after trial	1
			Summary complaint, PG	5
			Summary complaint, NG plea accepted, PG to other charge(s)	10
			Summary complaint, Crown motion to adjourn refused. Deserted simpliciter.	1
			Summary complaint, discontinued (insufficient evidence)	2
			Petition, not indicted on this charge	1
	Direct measure	3		
			Fiscal fine (£125 - together with other charge(s))	2
			Fiscal fine (£50)	1

The relatively low number of charges might reflect policing strategies focused on dispersal (recognising the impracticability of mass arrests) and, for peaceful protest, willingness to facilitate Convention rights.³³⁷ I have divided other public outdoor gatherings by size.

Table 25

Participate in social/ other public outdoor gathering (3 to 9 people)	25			
	Direct measure	10		
			Fiscal fine (£250)	1
			FF (£125), challenged. Summary complaint (JP), discontinued (failed service)	2
			Fiscal fine (£125)	6
			Fiscal fine (£50)	1
	Diversion	11		
			Failed diversion. Summary complaint, NG accepted, PG to other charge(s)	1
			Failed social work diversion, no further action	2
			Diversion to social work	8
	No action	4		
			No action (timebarred on receipt)	1
			No action (not criminal)	2
			No action	1
Participate in social/ other public outdoor gathering ("10 to 15" to "more than 200" people)	16			
	Court	11		
			Summary complaint. PG	3
			Summary complaint, NG accepted, PG to other charge(s)	6
			Summary complaint, NG accepted (co-accused PG)	1
			Summary complaint, discontinued (co-accused PG)	1
	Direct measure	1		
			Fiscal fine (£175 - together with other charge(s))	1
	Diversion	1		
			Diversion to social work	1
	No action	2		
			No action	2
	Duplicate	1		
			Rolled into another case	1

This demonstrates that smaller gatherings (broadly) resulted in lower-tariff disposals, suggesting proportionate decision-making across these two categories. Comparison with other categories, however, raises deeper questions.

There were only two more charges for the larger gatherings shown in Table 25 than for meeting one other person in public (which was never specifically criminalised).³³⁸ While there was a lower risk of transmission outdoors,³³⁹ physical distancing was still considered

³³⁷ See N McKerrell, "Scottish public protest at a time of Covid-19" (2021) 25 Edin LR 105, pg.107. At pg.110-111, he alludes to a stricter approach towards anti-lockdown or anti-mask protestors. These (and "anti-vaxxers") comprised most of the charges in Table 23.

³³⁸ Chapter 1.3.2 and Appendix 1.2.

³³⁹ Footnote 190.

appropriate.³⁴⁰ It is notable that there were so many charges for being outside home or travelling – as these activities theoretically increased the number of people who might spread the virus through contact – while actively engaging in (outdoor) contact attracted so few charges. Considering the relative proximity between the conduct and the harm, all else being equal, it is unclear why the “3 to 9 people” category should have been treated much more leniently than non-essential travel.³⁴¹

Similar observations can be made about public indoor gatherings.

Table 26

Attend social gathering/party at indoor public place (including in hotels, “raves” and pub “lock-ins” (excluding cars))

32				
	Court	2		
			Summary complaint, PG	1
			Summary complaint (JP Court), PG	1
	Direct measure	20		
			Fiscal fine (£500)	1
			FF (£250). Refused. Summary complaint (JP), discontinued (acceptable explanation offered)	1
			Fiscal fine (£250 - together with other charge(s))	3
			Fiscal fine (£175)	6
			Fiscal fine (£175 - together with other charge(s))	2
			Fiscal fine (£125)	1
			Fiscal fine (£125 - together with other charge(s))	2
			Fiscal fine (£50)	1
			PF Warning Letter	3
	Diversion	8		
			Diversion to social work	4
			Failed social work diversion. Fiscal fine (£175)	1
			Failed social work diversion. No further action	2
			Referred to Children's Reporter	1
	No action	2		
			No action	2

Like holding pub “lock-ins” or using holiday lets for parties, these might be seen as glaring examples of “rule-breaking”. Where especially large in number (such as for “raves” in abandoned premises), the potential harm – by contributing towards a “super-spreader event” – was significant. Nevertheless, the seriousness of these offences was reflected (if at all) only in higher fiscal fines.

³⁴⁰ In April 2020, SAGE advised that increasing permitted outdoor activities, while maintaining social distancing, would have a negligible direct impact on transmission. “Social distancing review – SAGE advice” (14 April 2020), pg.2-3
https://assets.publishing.service.gov.uk/media/5ee37a82d3bf7f1ebfc81dd6/S0129_Social_Distancing_Review.pdf.

³⁴¹ See Table 17 and Appendix 7.

This may have been pragmatic, given the maximum penalty. However, if the circumstances of any offences under Covid-19 legislation merited prosecution then these would surely rank highly.

None of this is to say that the prosecutorial response was necessarily wrong. Prosecutors should not be criticised for hesitating to seek criminal convictions, using emergency legislation, against those who had engaged in previously ordinary social behaviour. My point is that it does not reflect a clear outlook on *why* the conduct was criminal and might be deserving of punishment. The decision-making instead suggests some uncertainty on their part regarding the purpose of prosecution.

The focus of enforcement activity was certainly clear.³⁴² The sheer number of charges related to private gatherings is surely because these were seen as a key driver of transmission, and dispersal became a policing priority. Charges relating to private dwellings are shown below.

Table 27

Attend at/ enter another person's address (including uninvited)	90
Allow another person into dwelling for social/ non-essential purposes	32
Attend social gathering of 3 or more people indoors at private dwelling	500
Host indoor social gathering in dwelling (number not known/ not specified)	54
Host indoor social gathering in dwelling (3 people/ "at least 3" present in total)	73
Host indoor social gathering in dwelling (4 people/ "at least 4" present in total)	89
Host an indoor gathering in dwelling (5 people present in total)	40
Host an indoor gathering in dwelling (6 people/ "at least 6" present in total)	39
Host an indoor social gathering in dwelling (7 people/ "at least 7" present in total)	32
Host an indoor social gathering in dwelling (8 people in total/ "around 8"/ "at least 8" present in total)	27
Host an indoor social gathering in dwelling (9 people/ "at least 9" present in total)	17
Host an indoor social gathering in dwelling (10 people/ "around 10"/ "at least 10" present in total)	17
Host an indoor social gathering in dwelling (11 to 14 people present in total)	28
Host a party indoors at dwelling ("around 15" people to 19 people present in total)	19
Host a party indoors at dwelling ("around 20" people to "around 25" present in total)	25
Host a party indoors at dwelling (30 or more people present)	22
Host/attend outdoor gathering in garden at dwelling (excluding gatherings which were partly indoors)	13

The first two categories in Table 27 are an awkward mix of social gatherings, and other circumstances in which an accused went to, or entered, another person's address (for example, to help with a "non-essential" task, or being allowed in reluctantly), or vice-versa. These have been combined because the circumstances were sometimes unclear and police often treated entering or allowing another person into one's home as distinct wrongs, despite

³⁴² See, for example: "Over 300 fines issued as police called to over 300 gatherings at the weekend", Police Scotland website (November 2020) <<https://www.scotland.police.uk/what-s-happening/news/2020/november/over-300-fines-issued-as-police-called-to-over-300-gatherings-at-the-weekend/>>; "Covid in Scotland: Police break up hundreds of parties every week", BBC News (28 October 2020) <<https://www.bbc.co.uk/news/uk-scotland-54710380>>.

these never specifically being prohibited. Some examples (such as where one party did not willingly participate) cannot meaningfully be described as “gatherings”³⁴³ but can only have been criminal on that basis. Despite some reservations, I have treated these as criminal.

Two points can be noted from the remaining categories. Firstly, of the 482 charges in “hosting” categories, 202 were known to involve three to five people. Only 94 (19.5%) were in the 11 plus categories. Secondly, the marking decisions across all of these were remarkably similar. Tables 28-33 illustrate this.

Table 28

Host indoor social gathering in dwelling (3 people/“at least 3” present in total)

73			
	Court	24	
			Summary complaint, PG
			8
			Summary complaint, NG plea accepted, PG to other charge(s)
			11
			Summary complaint, discontinued (serving prison sentence on another matter)
			1
			Summary complaint, discontinued (accused deceased)
			3
			Summary complaint, discontinued (delay in execution of warrant)
			1
	Direct measure	25	
			Fiscal fine (£50) refused. Summary complaint (JP Court), discontinued (failed service)
			1
			Fiscal Fine (£50) refused. Summary complaint (JP Court), discontinued
			2
			Fiscal fine (£250 - together with other charge(s))
			1
			Fiscal fine (£125)
			4
			Fiscal fine (£125 - together with other charge(s))
			3
			Fiscal fine (£50)
			10
			PF Warning Letter
			4
	Diversion	4	
			Diversion to social work
			2
			Failed social work diversion, no further action
			2
	No action	11	
			No action - alternative charge (culpable and reckless conduct) used
			1
			No action - new charge added under correct regulations
			1
			No action (imminent time bar, further action disproportionate)
			1
			No action (insufficient evidence on more serious charge(s))
			1
			No action
			7
	Duplicate	9	
			Duplicate - no action
			2
			Rolled into another case
			7

³⁴³ Undefined in the March 2020 regulations. Thereafter: two or more persons present together for any form of social interaction or (in the Local Levels regulations), alternatively, to undertake any other activity with each other.

Table 29*Host indoor social gathering in dwelling (4 people/“at least 4” present in total)*

89			
	Court	37	
		Summary complaint, PG	5
		Summary complaint, NG plea accepted, PG to other charge(s)	15
		Summary complaint, NG plea accepted (global plea)	2
		Summary complaint, NG plea accepted (co-accused PG)	1
		Summary complaint, PG. Plea later withdrawn, deserted simpliciter	1
		Summary complaint, discontinued (plea agreement)	1
		Summary complaint, discontinued (failed service)	1
		Summary complaint, discontinued (wrong regulations)	1
		Summary complaint, discontinued (accused deceased)	4
		Summary complaint (JP Court), discontinued	1
		Summary complaint (JP Court), discontinued (age of offence)	2
		Summary complaint (JP Court), discontinued (accused serving prison sentence)	1
		Petition, not indicted on this charge	2
	Direct measure	23	
		Fiscal fine (£175)	1
		Fiscal fine (£125 - together with other charge(s))	2
		Fiscal fine (£125)	4
		Fiscal fine (£50)	10
		PF Warning Letter	6
	Diversion	4	
		Diversion to social work	2
		Failed social work diversion. No action	2
	No action	12	
		No action - alternative charge (culpable and reckless conduct) used	4
		No action	8
	Duplicate	13	
		Duplicate - no action	4
		Rolled into another case	9

Table 30*Host an indoor social gathering in dwelling (5 people present in total)*

40			
	Court	12	
		Summary complaint, PG	7
		Summary complaint, NG plea accepted, PG to other charge(s)	4
		Summary complaint, discontinued (wrong charge used)	1
	Direct measure	17	
		Fiscal fine (£125)	1
		Fiscal fine (£125 - together with other charge(s))	3
		Fiscal fine (£50)	5
		Fiscal fine (£50 - together with other charge(s))	1
		PF Warning Letter	7
	Diversion	1	
		Diversion to social work	1
	No action	6	
		No action - alternative charge (culpable and reckless conduct) used	1
		No action (time barred)	1
		No action	4
	Duplicate	4	
		Duplicate charge - no action	3
		Rolled into another case	1

These can be compared with the highest categories (for size of social gathering).

Table 31

Host a party indoors at dwelling (“around 15” people to 19 people present in total)

19			
	Court	2	
			Summary complaint, PG
			Summary complaint, Found Not Guilty after trial
	Direct measure	17	
			Fiscal fine (£250), not paid. Summary complaint (JP Court). Discontinued (failed service)
			Fiscal fine (£175 - together with other charge(s))
			Fiscal fine (£125)
			Fiscal fine (£50)
			Fiscal fine (£30)
			PF Warning Letter

Table 32

Host a party indoors at dwelling (“around 20” people to “around 25” present in total)

25			
	Court	8	
			Summary complaint, PG
			Summary complaint, NG plea accepted, PG to other charge(s)
			Summary complaint, NG plea accepted (global plea)
			Summary complaint (JP Court), PG
			Summary complaint (JP Court), discontinued (age of offence)
	Direct measure	14	
			Fiscal fine (£250)
			Fiscal fine (£175)
			Fiscal fine (£125 - together with other charge(s). Untraced. Summary complaint (JP Court). Discontinued (failed service)
			Fiscal fine (£50)
			PF Warning Letter
	No action	1	
			No action - alternative charge (culpable and reckless conduct) used
	Duplicate	2	
			Rolled into another case

Table 33

Host a party indoors at dwelling (30 or more people present)

22			
	Court	1	
			Summary complaint, NG plea accepted, PG to other charges
	Direct measure	19	
			Fiscal fine (£400)
			Fiscal fine (£325)
			Fiscal fine (£250)
			Fiscal fine (£175)
			Fiscal fine (£175 - together with other charge(s))
			Fiscal fine (£125)
			Fiscal fine (£50)
			PF Warning Letter
	Diversion	2	
			Diversion to social work
			Failed diversion (not suitable as under 16), no further action

These tables demonstrate a very measured approach towards this offending. Opinions might reasonably differ here. While hosting large parties would no doubt have attracted widespread

condemnation (particularly during peaks in transmission), prosecutorial under-reach was far preferable to over-reach. This perhaps reflected discomfort on the part of prosecutors with this temporary interference with civil liberties being enforced through criminal proceedings. Some of these charges, however, were pursued. Moreover, Tables 28 to 30 show that culpable and reckless conduct (a more serious offence) was sometimes used for the smaller gatherings.

This brings the question of what prosecution was aimed at achieving, across Covid-19 legislation, into sharp relief. Indoor gatherings were consistently identified as major clusters of transmission.³⁴⁴ “Super-spreading” events were seemingly critical: some evidence suggested that approximately 20% of infections caused 80% of secondary cases.³⁴⁵ Organising a large indoor party was amongst the most dangerous activities, for the public at large, prohibited under Covid-19 legislation. Yet this did not meet with the most robust of prosecutorial responses.

If prosecution was aimed at targeting the most obviously harmful conduct then we might expect more prosecutions initiated, and insisted upon, for very large private gatherings. If this was to punish wrongdoing, in the form of egregious rule-breaking, then we might have also expected a stricter approach towards “lock-ins” and attending (even small) indoor gatherings in hotels or rented accommodation. If this was pure deterrence then we might expect higher fines and fewer Not Guilty pleas being accepted or discontinuations across all regulations (at least while further “lockdowns” remained a realistic prospect).

By contrast, other behaviour (especially spitting, failure to self-isolate and similar conduct) met a resolute response. Examination of charges for pre-existing offences will demonstrate this. We have already seen that failure to self-isolate charges under Covid-19 legislation (Table 6) were normally either prosecuted or marked “no action”. While posing a lesser threat to healthcare infrastructure, these were probably perceived as more immediately harmful to other individuals who had not consented to the risk. This suggests that culpability was viewed through a narrow lens, focusing on direct risks and consequences for identifiable individuals – even if the dangers were far lesser, and at least as remote.

³⁴⁴ Footnote 190.

³⁴⁵ “SARS-COV-2 Transmission Routes and Environments”, SAGE (22 October 2020), pg.1 and 7 <https://assets.publishing.service.gov.uk/media/5fa43ef3e90e07041dd0fc0a/S0824_SARS-CoV-2_Transmission_routes_and_environments.pdf>.

In the next section, I consider the use of existing offences in this context. The common law offence of culpable and reckless conduct was interpreted and used expansively. This formed an important part of the prosecution landscape. Any conclusions on substantive criminalisation must account for this phenomenon.

4.5 Case review exercise: results (pre-existing offences)

In addition to Covid-19 legislation, I reviewed charges for offences carrying a “coronavirus” modifier.³⁴⁶ This research had to be curtailed due to time constraints.

I decided against systematically reviewing the 881 assault charges, which comprised the largest share of these. It is anticipated that these mostly involved spitting or coughing at emergency service workers (most I sampled fitted this description). In May 2020, the Lord Advocate promised that prosecutors would “respond robustly” to such offending, which would normally merit petition proceedings.³⁴⁷

Culpable and reckless conduct charges formed the second-largest share (481 charges),³⁴⁸ followed by contraventions of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (220 charges). The latter were difficult to categorise, often containing several allegations mixing novel and already criminal conduct (using a hypothetical example: “*shout, swear, remove your face covering, claim to have Covid, move towards X and threaten to spit on him*”). For this reason, and due to time pressures, I did not complete an analysis of these.

The remainder were small in number, including: 15 breach of the peace charges; three for wasting police time; two fraud charges; one malicious mischief, one breach of undertaking conditions; two aiding and abetting; and miscellaneous other offences,³⁴⁹ including many where the modifier was added in error.

³⁴⁶ The main limitation is that modifiers were not always added to the relevant charges. I have included several culpable and reckless conduct charges without modifiers found while reviewing charges under Covid-19 legislation.

³⁴⁷ Letter from the Lord Advocate to the Convenor of the Scottish Parliament’s Justice Committee (20 May 2020), pg.10 <<https://www.covid19inquiry.scot/sites/default/files/ev-documents/sci-copfsx-000021.pdf>>.

³⁴⁸ For these purposes, I have included the five with the charge code “culpable and reckless conduct to danger of life”. Some others contained similar aggravations in the charge’s free text.

³⁴⁹ I have not reviewed these as the totals were below the identifiability threshold.

Focusing, then, on culpable and reckless conduct charges, there is some information about these in the public domain. Examples include:

- Groups of hikers who were charged by police after being rescued while climbing Beinn A' Chroin,³⁵⁰ Ben Lomond,³⁵¹ and Finnich Glen³⁵² respectively, having travelled considerable distances there.
- A Fife woman who was charged after hosting a pool party in Buckhaven.³⁵³
- A person charged for organising a party in Bonnybridge attended by around 100 people, where a 48-seater bus was apparently found outside.³⁵⁴
- Police investigating the organisers of a ticketed party in Midlothian attended by over 300 people.³⁵⁵
- A councillor who appeared on petition for allegedly organising two “anti-lockdown” protests, outside of (and near to) the Scottish Parliament.³⁵⁶
- A man charged with planning a rave at a derelict farm in Slamannan, to be attended by “up to 200 people”.³⁵⁷
- A taxi driver who continued working after testing positive, including collecting care home staff and people travelling to and from hospital.³⁵⁸

Leaving aside whether these media reports were accurate, one aim of my empirical research was to ascertain the extent to which these were representative. Some were perhaps more

³⁵⁰ “Coronavirus: Two charged after 60-mile trip to climb mountain”, BBC News (2 June 2020) <<https://www.bbc.co.uk/news/uk-scotland-glasgow-west-52892409>>.

³⁵¹ “Ben Lomond rescue: Two walkers charged with Covid restriction breach”, The Herald (24 January 2021) <<https://www.heraldscotland.com/news/19035043.ben-lomond-rescue-two-walkers-charged-covid-restriction-breach/>>.

³⁵² “Two men charged after reckless behaviour at Devil’s Pulpit sparks rescue operation”, Daily Record (29 April 2021) <<https://www.dailyrecord.co.uk/news/local-news/men-charged-after-rescue-operation-24007141.amp>>.

³⁵³ “Woman, 57, arrested for allegedly hosting Fife pool party amid coronavirus lockdown”, The Courier (14 April 2020) <<https://www.thecourier.co.uk/fp/news/fife/1263991/woman-57-arrested-for-allegedly-hosting-fife-pool-party-amid-coronavirus-lockdown/>>.

³⁵⁴ Footnote 344.

³⁵⁵ “Police Scotland investigating house party attended by more than 300 people”, Police Scotland website (September 2020) <<https://www.scotland.police.uk/what-s-happening/news/2020/september/police-scotland-investigating-house-party-attended-by-more-than-300-people/>>.

³⁵⁶ “Councillor in court after two Edinburgh lockdown demonstrations”, Edinburgh Evening News (4 December 2020) <<https://www.edinburghnews.scotsman.com/health/coronavirus/councillor-in-court-after-two-edinburgh-anti-lockdown-demonstrations-3058260>>.

³⁵⁷ “Covid in Scotland: Man charged over ‘illegal rave’”, BBC News (8 November 2020) <<https://www.bbc.co.uk/news/uk-scotland-54866066.amp>>.

³⁵⁸ “Covid-positive Scots taxi driver put lives at risk picking up fares including care home workers, hospital patients and pensioners”, Daily Record (20 July 2021) <<https://www.dailyrecord.co.uk/news/scottish-news/taxi-driver-worked-despite-coronavirus-24577382>>.

serious than typical contraventions of Covid-19 regulations, while others, such as the hiking examples, seem unremarkable.

Moreover, I wished to explore whether the common law was used to fill gaps (actual or perceived) in the regulations. This seemed a real possibility, given the Scottish Police Federation's warning to that effect.³⁵⁹

The following table shows culpable and reckless conduct charges encountered during this research. Appendix 8 contains the full table, including outcomes.

³⁵⁹ "Coronavirus: Police 'expected to enforce guidance' as laws don't go far enough", The Herald (4 March 2021) (accessed via LexisNexis).

Table 34*Culpable and reckless conduct charges with a “coronavirus” modifier*

481		
	Travel from local area/ enter Scotland	<8
	Organise a protest in outdoor public place	<8
	Organise gathering in indoor public place (including pub "lock-ins" and "raves" in commercial premises)	10
	Organise party at holiday let (8 people to "around 200" in attendance)	10
	Attend party at dwelling/ holiday let ("more than 20" to "more than 30" people present)	39
	Repeatedly host social gatherings at private dwelling	<8
	Allow one other person into your address - indoor gatherings prohibited	<8
	Host social gathering in dwelling (more than 2 people present) - during first "lockdown"	37
	Host indoor social gathering in dwelling (number not specified) - indoor gatherings in dwellings prohibited	<8
	Host social gathering indoors at dwelling (3 to 5 people present in total) - indoor gatherings in dwellings prohibited	21
	Host social gatherings indoors at dwelling (6 to 9 people present in total) - indoor gatherings in dwellings prohibited	31
	Host party at dwelling ("around 10" to 19 people present in total) - indoor gatherings in dwellings prohibited	26
	Host party indoors at dwelling ("around 20" to "around 50" present in total) - indoor gatherings in dwellings prohibited	12
	Host/ attend social gathering in dwelling in excess of maximum permitted numbers	10
	Host a party where at least one person had Covid symptoms or host meant to be self-isolating	<8
	Host social gathering outdoors at dwelling	<8
	Fail to self-isolate after testing positive	30
	Fail to self-isolate in other circumstances (close contact tested positive/ while exhibiting symptoms/ after international travel)	11
	Fail to self-isolate while <u>claiming</u> to have tested positive/ have Covid symptoms/ be awaiting a test	23
	Fail to self-isolate and fail to disclose (or falsely deny) having Covid/ symptoms to police officers/ and others	13
	Falsely deny having Covid/ symptoms to police officers	15
	Fail to disclose to police officers/others that tested positive/ had symptoms/ had close contact with infected person	10
	Spit (or attempt to spit)/ cough towards police officer(s)/ police civilian staff member	27
	Spit (or attempt to)/ cough at police officers/ custody staff while had (or claiming to have) Covid/ symptoms/ contact with infected person	27
	Spit/ cough while near to police officers - including while had (or claiming to have) Covid/ symptoms/ contact with infected person	13
	Spit/ cough/ exhale towards another person	8
	Spit on/ lick surfaces in other public place	14
	Spitting in cell area of police van	17
	Spitting on other surfaces while in police custody	9
	Urinate/ smear other fluids (/and spit) in rear of police vehicle	<8
	Cough/spit in police vehicle while <u>claiming</u> to have Covid/ symptoms/ have been in close contact with infected person	11
	Other	18

My first observation is that a higher percentage of these charges were prosecuted in the first instance (47.4%) than for Covid-19 legislation (34.4%). These were normally either prosecuted (frequently on indictment) or marked “no action”. Some flagrant violations, of the kind mentioned earlier, were prosecuted – though still fewer than might be expected. Two examples are shown below.

Table 35

Organise gathering in indoor public place (including pub “lock-ins” and “raves” in commercial premises)

10				
	Court	5		
			Indicted, PG	1
			Indicted, NG plea accepted (co-accused PG)	1
			Summary complaint, discontinued (insufficient evidence)	2
			Petition, reduced to summary (changed to offence under regulations)	1
	Direct measure	3		
			Fiscal fine (£400)	1
			Fiscal fine (£325)	1
			PF Warning Letter	1
	No action	2		
			No action (insufficient evidence)	1
			No action (not criminal)	1

Table 36

Organise party at holiday let (8 people to “around 200” in attendance)

10				
	Court	4		
			Indicted. Plea in bar of trial sustained.	1
			Indicted, NG plea accepted (to use accused as witness against co-accused)	1
			Summary complaint, PG	1
			Summary complaint, discontinued	1
	Direct measure	2		
			Fiscal fine (£125)	1
			PF Warning Letter	1
	No action	4		
			No action (insufficient evidence)	4

Although the numbers are small, the use of direct measures is notable – in these circumstances, and the PF having selected a more serious crime. Direct measures were often issued for culpable and reckless conduct charges for hosting private gatherings during the first “lockdown” (shown below). For that conduct, however, there was no alternative charge available.

Table 37*Host social gathering in dwelling (more than 2 people present) – during first “lockdown”*

37				
	Court	8		
			Summary complaint, PG	1
			Summary complaint, found Not Guilty after trial	1
			Summary complaint, discontinued (accused health)	3
			Summary complaint, discontinued (no longer in public interest)	2
			Summary complaint, discontinued	1
	Direct measure	13		
			Fiscal fine (£250)	1
			Fiscal fine (£175)	1
			Fiscal fine (£175 - together with other charge(s))	1
			Fiscal fine (£125 - together with other charge(s))	2
			Fiscal fine (£50)	6
			PF Warning Letter	2
	No action	10		
			No action - alternative charge used	1
			No action (further action disproportionate)	1
			No action (insufficient evidence)	7
			No action	1
	Duplicate	6		
			Rolled into another case	6

In Chapter 3, I argued that prosecutions for Covid-19 exposure, where there was no evidence that an accused was infected, significantly expanded the (practical, if not theoretical) scope of culpable and reckless conduct. Private gatherings provide a clear example of this. Fewer than eight charges involving gatherings featured a suggestion that a participant should have been self-isolating.

The charges in Table 37 are not divided by gathering size, due to the identifiability threshold. However, 24 of these (where the number was specified) involved three to five people. Seven of those charges resulted in court proceedings.

During the first “lockdown”, the common law was effectively being used to cover a gap in the regulations. After this lacuna was filled, this practice continued (as is shown below). In many cases, the more serious offence must have been deemed appropriate to the circumstances.³⁶⁰

³⁶⁰ While there were some examples of police officers unaware of this change, this does not appear to have been widespread, and police frequently explained the decision to use this charge as based on seriousness.

Table 38

Host social gathering indoors at dwelling (3 to 5 people present in total)*	21			
*indoor gatherings in dwellings prohibited	Court	5		
			Summary complaint, PG	2
			Summary complaint, NG plea accepted, PG to other charge(s)	1
			Summary complaint, discontinued	1
			Petition, reduced to summary (prosecuted as offence under regulations)	1
	Direct measure	2		
			Fiscal fine (£125)	1
			Fiscal fine (£125 - together with other charge(s))	1
	No action	14		
			No action - alternative charge (Covid regulations) used	2
			No action (age of offence)	1
			No action (further action disproportionate)	1
			No action (insufficient evidence)	5
			No action (not criminal)	3
			No action	2
Host social gatherings indoors at dwelling (6 to 9 people present in total)*	31			
*indoor gatherings in dwellings prohibited	Court	10		
			Summary complaint, PG	4
			Summary complaint, NG plea accepted, PG to other charge(s)	3
			Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
			Summary complaint, discontinued (delay in execution of warrant)	1
			Summary complaint, discontinued	1
	Direct measure	5		
			Fiscal fine (£125)	3
			PF Warning Letter	2
	No action	14		
			No action - alternative charge (Covid regulations) used	1
			No action (not criminal)	1
			No action (insufficient evidence)	7
			No action (evidential issues, mitigating circumstances)	1
			No action (further action disproportionate)	1
			No action	3
	Duplicate	2		
			Rolled into another case	2
Host party at dwelling ("around 10" to 19 people present in total)*	26			
*indoor gatherings in dwellings prohibited	Court	7		
			Summary complaint, PG	2
			Summary complaint, PG to alternative charge (Covid regulations)	1
			Summary complaint, NG plea accepted, PG to other charge(s)	1
			Summary complaint, discontinued (no longer in public interest)	1
			Summary complaint, discontinued	1
			Petition, not indicted (insufficient evidence)	1
	Direct measure	6		
			Fiscal fine (£250)	2
			Fiscal fine (£125)	4
	No action	13		
			No action (insufficient evidence)	7
			No action (not criminal)	1
			No action	5
Host party indoors at dwelling ("around 20" to "around 50" present in total)*	12			
*indoor gatherings in dwellings prohibited	Court	3		
			Summary complaint, discontinued (no longer in public interest)	1
			Summary complaint, discontinued (delay in execution of warrant)	1
			Petition, not indicted (insufficient evidence)	1
	Direct measure	2		
			Fiscal fine (£175)	1
			Fiscal fine (£50)	1
	No action	7		
			No action (insufficient evidence)	7

There was little to distinguish between charges in Table 38 (regarding proof of the crime) beyond gathering size. Larger gatherings were arguably not only more serious, but much more likely to constitute the offence. The risks of higher numbers congregating in an enclosed space, even without evidence of infection, were simply greater and more obvious.

Nonetheless, while prosecution was more likely where more than five people were present, this did not increase further as gathering sizes increased. Indeed, most of the largest category were marked “no action” due to insufficient evidence (usually, across gathering sizes, that the

behaviour exhibited the “high standard of recklessness” required). It is unknown whether this was a purely legal assessment, or there was a disinclination to argue the point given a perceived lack of seriousness.

Many “no action” decisions were taken by COPFS’ lead markers for these offences. This brought a degree of consistency as time progressed. It does, however, mean that some perverse outcomes can be highlighted, by comparing gathering size and outcome.

Compare these charges to an example used in Chapter 3: spitting in the cell area of a police van.

Table 39

17			
	Court	13	
		Petition. PG by s76 indictment	1
		Indicted, NG plea accepted (incorporated into another charge to which PG)	1
		Indicted, NG plea accepted, PG to other charge(s)	2
		Marked for petition, warrant withdrawn (accused deceased)	1
		Summary complaint, PG	1
		Summary complaint, NG plea accepted - incorporated into another charge to which PG (s38 CJLSA 2010)	1
		Summary complaint, NG plea accepted, PG to other charge(s)	2
		Summary complaint, discontinued	1
		Petition, reduced to summary. Discontinued (issues with other charge)	1
		Petition, no further action - alternative charge (s38 CJLSA 2010) used	1
		Petition. Rolled into another case - alternative charge (s38 CJLSA 2010) used	1
	Diversion	1	
		Referred to Children's Reporter	1
	No action	2	
		No action - alternative charge (s38 CJLSA 2010) used	2
	Duplicate	1	
		Rolled into another case	1

These, and similar categories, were nearly always marked for court proceedings.

Table 40

Spit on/lick surfaces in other public place

14			
	Court	10	
		Indicted. PG	1
		Indicted, PG under deletion (of police van and car - PG to other public places only)	1
		Summary complaint, PG	2
		Summary, PG to alternative charge (s38 CJLSA 2010)	1
		Summary complaint, PG to alternative charge (breach of the peace)	1
		Summary complaint, NG plea accepted, PG to other charge(s)	1
		Summary complaint, discontinued (witness issues)	1
		Petition, reduced to summary. NG plea accepted, PG to other charge(s)	1
		Petition, not indicted on this charge (incorporated into s38 CJLSA 2010)	1
	No action	4	
		No action (insufficient evidence)	1
		No action - alternative charge (s38 CJLSA 2010) used	3

So far as possible, I have separately reported charges where an accused also claimed to have Covid (or to be potentially infectious), or there was evidence of this. Compare the following to Table 39.

Table 41

Cough/spit in police vehicle while claiming to have Covid/ symptoms/ to have been in close contact with infected person

11				
	Court	7		
			Indicted. PG	2
			Petition. PG by s76 indictment	1
			Indicted, NG plea accepted, PG to other charge(s)	2
			Petition, not indicted on this charge (PG by s76 to other charge(s))	1
			Summary complaint, NG plea accepted, PG to other charge(s)	1
	No action	4		
			No action - alternative charge (s38 CJLSA 2010) used	4

More of the charges in Table 41 resulted in a conviction for this offence. However, the sample is small, and the percentage was higher for charges in table 40 (where there was no evidence of infectiousness).

Similarly, charges involving spitting or coughing at police officers were nearly always marked for court. Prosecutors normally insisted upon guilty pleas, in plea negotiations, where there was any suggestion of infectiousness – as shown in Table 43.

Table 42*Spit (or attempt to spit)/cough towards police officer(s)/police civilian staff member*

27				
	Court	15		
			Indicted. Found Guilty after trial	1
			Indicted. PG	2
			Indicted. PG to amended charge ("cough in vicinity of")	1
			Indicted. NG plea accepted - incorporated into other charge (s38 CJLSA 2010)	2
			Indicted. NG plea accepted, PG to other charge(s)	3
			Indicted. Not Proven verdict after trial	1
			Summary complaint, PG	3
			Petition. No further action - alternative charge (s38 CJLSA 2010) used	1
			Petition. No further action - alternative charges (assault) used	1
	No action	10		
			No action - alternative charges (s38 CJLSA 2010 and assault) used	1
			No action - alternative charge(s) (assault) used	8
			No action (accused health, age of offence)	1
	Duplicate	2		
			Rolled into another case	2

Table 43*Spit (or attempt to)/cough at police officers/custody staff while had (or claiming to have) Covid/symptoms/contact with infected person*

27				
	Court	18		
			Indicted. PG	7
			Petition. PG by s76 indictment	2
			Petition, indicted on this as an alternative charge. PG to amended charge (BOTP)	1
			Indicted. Not Proven verdict after trial	2
			Summary complaint. PG.	2
			Petition. Rolled into another case	1
			Petition, no further action - alternative charge (s38 CJLSA 2010) used	1
			Petition, no further action - alternative charge(s) (assault) used	2
	No action	7		
			No action - alternative charges (assault and s38 CJLSA 2010) used	2
			No action - alternative charge(s) (assault) used	3
			No action - alternative charge (s38 CJLSA 2010) used	1
			No action - alternative charge (police assault) used	1
	Duplicate	2		
			Rolled into another case	2

The following is also included, for completeness.

Table 44

*Spit/ cough while near to police officers – including while had (or claiming to have)
Covid/symptoms/contact with infected person*

13				
	Court	12		
			Indicted. PG	5
			Indicted. NG plea accepted - incorporated into other charge to which PG	2
			Indicted. NG plea accepted, PG to other charge(s)	1
			Summary complaint, PG	1
			Summary complaint, NG plea accepted, PG to other charge(s)	1
			Petition, reduced to summary, found Not Guilty after trial	1
			Petition, reduced to summary (alternative charge - resisting arrest - used)	1
	No action	1		
			No action	1

For charges in Tables 41, 43 and 44, the only evidence of infectiousness often came from the accused. Where there was uncertainty regarding whether the coughing or spitting was aimed at another person (and therefore assault could not be established), section 38 offences were sometimes preferred to culpable and reckless conduct, as the behaviour was likely to be alarming but not necessarily dangerous.

I have separately reported failure to self-isolate charges where there was no other evidence of infection. I have also distinguished between positive tests (actual knowledge) and other circumstances where an accused ought to have known that they were potentially infectious.

Table 45*Fail to self-isolate after testing positive*

30				
	Court	18		
			Indicted. PG	4
			Indicted. NG plea accepted, PG to other charge(s)	2
			Indicted. Discontinued (accused health)	1
			Summary complaint, PG	1
			Summary complaint, NG plea accepted, PG to other charge(s)	1
			Summary complaint, discontinued (failed service)	1
			Summary complaint, discontinued (delay in proceedings concluding, no longer in public interest)	1
			Petition, reduced to summary. Discontinued (witness issues)	1
			Petition, reduced to summary. Discontinued (mitigating circumstances)	1
			Petition, no further action (PG to other charges by s76 indictment)	1
			Petition, no further action (exculpatory evidence)	1
			Petition, no further action (mitigating circumstances)	1
			Petition, no further action (insufficient evidence)	1
			Petition, rolled into another case	1
	Direct measure	2		
			PF Warning Letter	2
	Diversion	2		
			Referred to Children's Reporter	2
	No action	4		
			No action (insufficient evidence)	1
			No action	3
	Duplicate/ other	4		
			Rolled into another case, charge merged	1
			Rolled into another case	3

Table 46*Fail to self-isolate while claiming to have tested positive/have Covid symptoms/be awaiting a test*

23				
	Court	15		
			Indicted, NG plea accepted (no evidence that had actually Covid), PG to other charge(s)	1
			Indicted. NG plea accepted (evidential issues)	1
			Summary complaint, PG	1
			Summary complaint. NG plea accepted, PG to other charge(s)	3
			Summary complaint. No case to answer submission sustained (Found Not Guilty)	1
			Summary complaint, withdrawn at trial (issues with other charges) (Found Not Guilty)	1
			Summary complaint, discontinued (witness issues, mitigating circumstances)	1
			Summary complaint, discontinued	1
			Petition, no further action - alternative charge (s38 CJLSA 2010) used	1
			Petition, no further action (insufficient evidence)	3
			Petition, no further action	1
	No action	7		
			No action - alternative charge (s38 CJLSA 2010) used	1
			No action (insufficient evidence)	3
			No action	3
	Duplicate	1		
			Rolled into another case	1

Most charges in Table 46 were initially marked for court proceedings, though more were either discontinued (or not indicted) than in Table 45, and fewer convictions resulted. This was sometimes, though not always, attributable to issues with proof. Given the Scots law

requirement for corroboration, charges in Table 46 – alleging that an accused had behaved recklessly because of their Covid-19 status, but with only one source of evidence relating to that status (an admission) – constituted a radical approach to the offence. This was also true of some charges within Tables 48 to 50.

Table 47 shows charges for failure to self-isolate where there was neither evidence of actual knowledge,³⁶¹ nor a confirmed infection.

Table 47

Fail to self-isolate in other circumstances (close contact tested positive/while exhibiting symptoms)

11				
	Court	7		
			Indicted. PG	1
			Indicted. Discontinued (exculpatory evidence)	1
			Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
			Summary complaint, discontinued (evidential issues, no longer in public interest)	2
			Petition, not indicted on this charge (insufficient evidence)	1
			Petition, not indicted on this charge	1
	Diversion	2		
			Referred to Children's Reporter	2
	No action	2		
			No action (mitigating circumstances)	1
			No action (insufficient evidence)	1

Self-isolation charges (especially in Table 45) sometimes alleged other activity, such as entering another person's address or a shop or travelling on public transport. This was often treated as an aggravating factor.

Related categories involved failure to disclose (or falsely denying) infection to the police, on arrest (or in similar circumstances). The potential significance of this distinction was noted earlier.³⁶² Nevertheless, these were treated similarly, and non-disclosure charges resulted in more convictions for this offence.

³⁶¹ See Chapter 3.3.5.

³⁶² Chapter 3.2.1 and footnote 206.

Table 48*Falsely deny having Covid/symptoms to police officers*

15				
	Court	8		
			Indicted. PG	1
			Summary complaint, PG	1
			Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
			Summary complaint, discontinued (accused deceased)	1
			Petition, no further action (accused deceased)	1
			Petition, no further action - alternative charge (Wasting Police Time) used	1
			Petition, no further action (exculpatory evidence)	2
	No action	6		
			No action - alternative charge (s38 CJLSA 2010) used	1
			No action (mitigating circumstances)	1
			No action (insufficient evidence)	1
			No action	3
	Duplicate	1		
			Rolled into another case	1

Table 49*Fail to disclose to police officers/others that tested positive/had symptoms/had close contact with infected person*

10				
	Court	8		
			Indicted, PG	1
			Pettion. PG by s76 indictment	2
			Summary complaint. PG to alternative charge (BOTP) by falsely claiming to have covid	1
			Summary complaint, NG plea accepted, PG to other charge(s)	1
			Summary complaint, discontinued	1
			Petition, not indicted on this charge (PG by s76 to others)	1
			Petition, no further action (insufficient evidence)	1
	No action	2		
			No action (insufficient evidence)	1
			No action - alternative charge (s38 CJLSA 2010) used	1

Table 50

Fail to self-isolate and fail to disclose (or falsely deny) having Covid/symptoms to police officers/and others

13				
	Court	9		
			Indicted, PG	2
			Indicted. PG under deletion (not specified)	1
			Indicted. NG plea accepted, PG to other charge(s)	1
			Summary complaint, discontinued (accused deceased)	1
			Petition, reduced to summary. NG plea accepted, PG to other charge(s)	1
			Petition, no further action	1
			Petition, no further action (insufficient evidence)	2
	No action	2		
			No action (insufficient evidence)	1
			No action	1
	Duplicate	2		
			Rolled into another case	2

Across self-isolation categories, prosecution usually resulted. Failure to self-isolate following an independently confirmed infection was generally taken more seriously than other self-isolation charges. However, these were pursued less persistently than spitting cases. For some examples (like spitting in police officers' faces), few would question the tough stance taken. These exhibited complete indifference to the potential danger towards (and likely alarm caused to) identifiable individuals – in the course of their work, serving the public.

For others, such as spitting in public, the connection with harm is less obvious. This may reflect a limited understanding of the science, or simply a view that this was a gratuitous risk to take. Quite simply: spitting has no social value, whereas most activities undertaken instead of self-isolating (for instance) have at least some. It may have been seen as wrongful for that reason.

Otherwise, we can see that culpable and reckless conduct charges involving a direct risk (even remote) towards identifiable, and non-consenting individuals were generally treated more seriously. Behaviour threatening collective interests – through involvement in potential “super-spreader” events, or by displaying disdain for the rules, widespread compliance with which was a public health necessity – was not prioritised.

4.6 Conclusion

The research outlined here seeks to build a better understanding of how Covid-19 offences were enforced. The full tables are included as appendices to promote further analysis and discussion.

My aim is not to provide complete explanations for every trend identified. This would belie the messiness apparent in some of the results. That was to be expected, particularly with the regulations – as prosecutors grappled with how to respond proportionately to contraventions of emergency legislation during a crisis.

However, certain themes do emerge from prosecutors' use of (and innovation upon) the regulations. I highlight these in my final section, reflecting on this empirical research while drawing on insights from criminal law theory.

Conclusion

This thesis has sought to examine the use of the criminal law as a response to the Covid-19 pandemic in Scotland. Its central aims have been to chart the drastic expansion of the criminal law, and to examine the new offences created (and development of the common law) in seeking to analyse the justification for criminalisation in this context. This work has important implications not only for those involved in the administration of criminal justice in Scotland but for all those interested in criminalisation in times of crisis.

In pulling together insights from throughout this thesis, I will start by summarising key findings from the research outlined in Chapter 4.

For stakeholders in the criminal justice system, the most notable trend is likely to be the extent of possible charging errors identified by this research, both in terms of the substance of the provisions and whether regulations were in force at the relevant date. These issues were not unique to Scotland,³⁶³ or to subordinate legislation made during the Covid-19 pandemic,³⁶⁴ but nevertheless merit further investigation. Frequent changes in legislation and unclear public communications regarding the legal status of different rules were probably significant contributing factors.

Whether, and to what extent, these issues bear on how the rationale for criminalisation was understood is unclear (an area with space for further research). Most charges alleging conduct not prohibited by the regulations involved private gatherings or failure to self-isolate. These carried an obvious risk of transmission and were consistently discouraged through government messaging, which is likely to have influenced assumptions regarding their legal status.

However, a broader connection between potential harm and enforcement did not emerge. Across Covid-19 legislation, restrictions on movement – though more remote and less targeted – were prosecuted at a similar rate as failures to self-isolate, and with greater frequency than attending or hosting gatherings.

Restrictions on private gatherings (by far the most common charge type) further illustrate this point. Decision-making by prosecutors here demonstrated considerable restraint (a common,

³⁶³ Footnote 300.

³⁶⁴ See, for example, *R v Chambers* [2008] EWCA Crim 2467.

and perhaps laudable, theme). Private gatherings, including very large parties, normally resulted in alternatives to prosecution. Significantly, there was no clear correlation between size of private gatherings and marking outcome (both under Covid-19 legislation and the common law), even for standalone charges – notwithstanding the obvious increased risks and likelihood of greater public disapproval as numbers rose.

Similarly, some examples of the most obviously dangerous behaviour (such as parties of 30 or more) or the most flagrant breaches of community expectations (renting Airbnbs for parties, holding pub “lock-ins”) were not firmly pursued. Meanwhile, “leave home” and travel restriction charges were more likely to be prosecuted than not.

Ease of proof is one possible explanation for this disparity. Proving that an accused did not live with others with whom they gathered was not always straightforward, particularly without using those persons as witnesses. This is, however, unlikely to have been so problematic as gathering size increased.³⁶⁵

A perhaps better explanation is the presence or absence of other criminality. Covid-19 legislation charges were far more likely to be prosecuted when accompanied by other offending. There was evidently a focus on maintaining public order, as can be seen from the categories in Tables 7 and 16. Similarly, protest activity and football-related disorder were nearly always marked for court. By contrast, few charges were reported for other public outdoor gatherings, and the response (where involving fewer than 10 people) was relatively lenient.

Similar observations can be made of culpable and reckless conduct charges. These were (unsurprisingly) more likely to result in prosecution. However, the approach varied between different types of offending. Charges for hosting parties of 20 to 50 people were all either marked “no action”, for direct measures, or for court and later discontinued. Many of the charges in Table 38 (hosting gatherings in dwellings) were deemed not to exhibit the “high standard of recklessness” required.

Meanwhile, spitting in public or within police vans was resolutely prosecuted, notwithstanding the weaker scientific basis for asserting a risk of harm than large gatherings. As argued in Chapter 3, these were part of the expansive approach taken towards culpable

³⁶⁵ Proving that an accused was residing in a different address, or council area, was also sometimes difficult: details provided by an accused required corroboration; Police National Computer checks alone might be insufficient for proof beyond reasonable doubt.

and reckless conduct. Prosecution for exposure to infectious disease was previously regarded as exceptional. Yet only a minority of Covid-19 offences involved any suggestion (fewer still, independent evidence) that an accused was even infectious.

Actual infection on an accused's part was often treated as an aggravating factor. This can be seen in the higher number of guilty pleas, insisted upon by prosecutors in plea negotiations, for spitting or coughing at, or while in the vicinity of, police officers while apparently infectious. Across both Covid-19 legislation and common law charges, activities undertaken in those circumstances generally resulted in stronger prosecutorial action. Outcomes for charges involving failure to self-isolate, non-disclosure of an infection or spitting while infected (or claiming to be) can be contrasted with those for (public and private) social gatherings and restrictions on movement.

There is an important exception to this. Spitting charges were almost invariably prosecuted (often on indictment), regardless of an accused's Covid-19 status. While few would disagree with the tough prosecutorial response towards spitting at police officers, extending this inclination to raise proceedings to spitting in their presence, or in public, is difficult to rationalise – particularly where an accused was not infected. The accused's intention (to cause disruption or alarm) must have been a significant factor. However, the likelihood of causing actual harm (through direct infection or increased transmission rates) was almost certainly lower than with large gatherings which threatened to become “super-spreader” events.

The relative social value of the activities may have been an important consideration. That must have been weighed against pre-pandemic standards, given the likelihood that attending “raves”, hosting large parties or “lock-ins” during the pandemic would have met strong public disapproval.

While a striking feature of police reports surveyed was a tone of moral condemnation (especially for private gatherings), a sense that prosecuting Covid-19 charges involved redressing moral wrongdoing did not emerge from this research. That is certainly clear in prosecutorial decision-making for indoor gatherings, no matter how flagrant or potentially dangerous.

Instead, across Covid-19 charges, behaviour threatening individual interests (of persons who had not consented to the risk, however speculative) were prioritised over threats to collective interests. In Chapter 2, I argued that “accumulative harms” was an under-developed concept

in criminal law theory. This was the obvious rationale for “lockdown” measures, but the case for criminalisation was never fully articulated in these terms. It may be little surprise, therefore, that the offences which could be justified in this way were unevenly prosecuted: restrictions on movement were marked for court proceedings more commonly than private gatherings, notwithstanding the latter’s greater contribution towards transmission.

A recognition of collective interests was central to public compliance with “lockdown” measures. As I argued in Chapter 2.4.3, moral outrage towards the “selfishness” displayed by “rule-breakers” flowed from this. The arguments advanced by Duff and by Simester and von Hirsch provide a normative basis for asserting that some “Covid breaches” might be considered wrongful, and therefore justifiably criminalised. Covid-19 legislation sought to translate inchoate expectations into clear, concrete rules designed to protect public health. Disregarding these reasonable burdens imposed in support of the common good was arguably wrongful and therefore deserving of punishment.

This argument lends itself more readily to blunter, less nuanced prohibitions during “peaks” in transmission. Restrictions on leaving home and on travel might readily be justified on that basis. That so many such charges were reported, and mostly prosecuted, suggests that this justification was generally accepted.

However, whilst enactment of Covid-19 offences could not be fully understood without an appeal to shared obligations (and the wrongfulness of flouting these), behaviour perceived as threatening individual interests was more likely to result in court proceedings. This suggests that the argument from wrongdoing (like that relating to accumulative harms) was not made explicitly and persuasively enough in relation to the creation and use of some Covid-19 offences. This became part of the regulations’ character, but did not significantly inform prosecution priorities.

Another, more cynical, interpretation is that these findings demonstrate the limits of criminal law theory. Applying different normative theories can shape the ideal criminal law, and provide an *ex post facto* justification for any or all of these offences, but does little to explain how they were perceived and used in practice. If that is correct, then there is an even greater need for empirical research on areas of Scottish criminal practice (including on prosecutorial decision-making), the value of which has been illustrated by this work.

Alternatively, the norms which developed, and motivated social disapproval of certain conduct faded over time, as transmission rates fell and society sought to return to normal. This might explain the sober outlook taken by prosecutors – particularly when making decisions months after the event. The mild wrongdoing involved may also have been outweighed by practical considerations (notably, the court backlog) and unease over seeking criminal convictions for contravening these emergency restrictions. The outcomes of those assessments probably reflect that arguments grounded in collective interests were made more consistently and persuasively for some offences than for others.

While these questions cannot be definitively resolved here, some more tangible implications of this research can be identified. Firstly, while my aim is not to diagnose the reasons for charging errors, one consequence of this research is that it might prompt enforcement agencies to investigate whether miscarriages of justice have occurred. Appeals against conviction may follow. Given the likelihood of direct measures issued on a legally erroneous basis, a broader review might also be contemplated.

A less noticeable, but more enduring, consequence of the practices identified here relates to the expansive application of the common law. Numerous prosecutions for culpable and reckless conduct – in which there was no suggestion that the accused was infected, and no evidence that their behaviour could result in transmission – confirmed that this offence does not require the material conditions to exist for the actualisation of the relevant risk.

In this important respect, the contours of criminal liability were developed significantly by prosecutors and courts. Given the sheer quantity of legislation and context of daily televised updates from the First Minister (often highlighting changes in law or guidance), a question arises as to whether this was the most appropriate means of shaping criminal law during the pandemic. In future crises, it would be preferable for more serious offences imputing recklessness to be clearly defined by parliament. While the content of such offences might not have differed enormously from charges in Tables 39-50, this would (in theory)³⁶⁶ have enabled fuller consideration of the available scientific evidence and a wider assessment of competing interests. A framework for such offences should be designed as part of civil contingencies planning, rather than drafted during an emergency.

³⁶⁶ Footnote 10.

One final observation follows from this. For all the influence of criminal justice actors, prosecution practice was disconnected from any clear sense of the rationale for having a criminal law response to Covid-19. I have suggested that this reflected a failure by lawmakers to articulate clear, principled arguments for certain offences. More fundamentally, however, this might demonstrate a lack of attention towards the institutional role of the criminal justice system in a crisis. The government communicated to the public, through criminal legislation, the gravity of the measures (and their compulsory status). The police, invested with coercive emergency powers, sought to disrupt dangerous activities and maintain public order, securing public confidence in the state's response. The role of the justice system within this paradigm is less clear, beyond as an enforcement mechanism of last resort. If ideals of justice are to be maintained then it is essential that – absent normative arguments for the state invoking the criminal law – prosecution agencies engage in a deeper analysis of the underlying justification for these offences, and provide comprehensive guidance for decision-makers on how this might bear on different types of case. This exercise, while perhaps alien in ordinary circumstances, becomes crucial in a state of emergency given the breadth and novelty of the prohibitions. Otherwise, there is a risk that criminal justice becomes what Duff calls a “simulacrum [of] criminal law”,³⁶⁷ detached from broader considerations of principle.

³⁶⁷ Duff, *The Realm of Criminal Law*, pg.249-250.

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- Oslo Declaration on HIV Criminalisation (2012) (“Oslo Declaration”) <https://www.hivlawandpolicy.org/sites/default/files/Oslo_declaration.pdf>

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- “Countries: Scotland”, HIV Justice Network website <<https://www.hivjustice.net/country/gb/gb-sc/>>

Cases

Scotland

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- Khaliq v HM Advocate 1984 SLT 137
- Kerr v HM Advocate 1986 SCCR 91
- Stocks v Hamilton 1991 SCCR 190
- Ulhaq v HM Advocate 1991 SLT 614
- HM Advocate v Harris 1993 JC 150
- Kimmins v Normand 1993 SLT 1260
- Sutherland v HM Advocate 1994 JC 62
- Lister v Lees 1994 JC 223
- McKee v MacDonald 1995 SLT 1342
- Docherty v Brown 1996 JC 48
- HM Advocate v Stephen Kelly (2001) (unreported)
- Mallin v Clark 2002 SLT 1202
- HM Advocate v M 2007 SLT 462; 2007 SCCR 124
- HM Advocate v Mark Devereaux (2010) (unreported)
- Glancy v HM Advocate 2012 SCCR 52
- Urquhart v HM Advocate 2016 JC 93; 2015 HCJAC 101
- McCallum v PF Edinburgh 2019 JC 125, 2019 HCJAC 26
- HM Advocate v Lindsay (Iain) 2020 JC 293, 2020 HCJAC 26
- Dewar and McLean v HM Advocate 2021 HCJAC 28
- Philip v Scottish Ministers [2021] CSOH 32, 2021 SLT 559

England & Wales

- R v Brown [1994] 1 AC 212, 1993 UKHL 19
- Sheldrake v Director of Public Prosecutions; Attorney General’s Reference (No.4 of 2002) [2004] UKHL 43; [2005] 1 AC 264; 3 WLR 976; [2005] 1 All ER 237
- R v Dica [2004] QB 1257, [2004] EWCA Crim 1103
- R v Konzani [2005] 2 Cr App R 14; [2005] EWCA Crim 706
- R v Chambers [2008] EWCA Crim 2467.
- Director of Public Prosecutions v Ziegler and others [2021] UKSC 23, [2021] 3 WLR 179, [2021] UKSC 23
- Leigh & others v Commissioner for the Police of the Metropolis [2022] EWHC 527

APPENDIX 1 – OFFENCES CONTAINED IN COVID-19 LEGISLATION

1. Timeline of criminal offences

<u>Legislation</u>	<u>Offence</u>	<u>Description of offence</u>	<u>In force</u>
The Coronavirus Act 2020	Paragraph 45(1)(a), Schedule 21	Failure, without reasonable excuse, to comply with any direction, reasonable instruction, requirement or restriction given by a public health officer, constable or immigration officer relating to their powers in Schedule 21 (in respect of potentially-infectious persons).	25/03/2020 to 24/03/2022
	Paragraph 45(1)(b), Schedule 21	Failure of an individual who has responsibility for a child, without reasonable excuse, to comply with a duty imposed on them in relation to the child.	25/03/2020 to 24/03/2022
	Paragraph 45(1)(c), Schedule 21	Absconding or attempting to abscond while being removed or kept at a place (for assessment and quarantine) under the powers in Schedule 21.	25/03/2020 to 24/03/2022
	Paragraph 45(1)(d), Schedule 21	Knowingly providing false or misleading information in response to a requirement to provide information exercised in terms of Schedule 21.	25/03/2020 to 24/03/2022
	Paragraph 45(1)(e), Schedule 21	Obstructing a person exercising or attempting to exercise a power under Schedule 21.	25/03/2020 to 24/03/2022
	Paragraph 22(1), Schedule 22	<p>Failure, without reasonable excuse, to comply with direction made by the Scottish Ministers under Schedule 22 (imposing prohibitions, requirements or restrictions in relation to an event or gathering specified/of a specified description, or premises specified/ of a specified description).</p> <p>Such directions only impose requirements, etc. on owners/occupiers of the premises, those responsible for holding/organising events, or those responsible for managing capacity.</p>	25/03/20 to 11/12/21

The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020	Regulation 8(1)	<p>Contravening a requirement in the regulations (including to stay at home, and restrictions on public gatherings).</p> <p>This was subject to a defence of reasonable excuse.</p>	26/03/2020 to 13/09/2020
	Regulation 8(2)	<p>Obstructing a person carrying out a function under these regulations.</p> <p>Subject to a defence of reasonable excuse.</p>	26/03/2020 to 13/09/2020
	Regulation 8(3)	<p>Contravening a direction, failing to comply with a reasonable instruction or prohibition notice given by a relevant person.</p> <p>Subject to a defence of reasonable excuse.</p>	26/03/2020 to 13/09/2020
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020	Regulation 5(1)	<p>Contravening requirement to provide passenger information as soon as reasonably practicable for self, and any child accompanying them for whom they are responsible.</p> <p>Subject to a defence of reasonable excuse.</p>	08/06/2020 to 19/09/2021
	Regulation 5(2)	<p>Knowingly or recklessly providing false or misleading passenger information – either on arrival or where information provided at that stage is no longer accurate.</p> <p>Subject to a defence of reasonable excuse.</p>	08/06/2020 to 19/09/2021
	Regulation 5B(1)	<p>Knowingly failing, without reasonable excuse, to possess notification of a negative test result on entering Scotland from outwith the Common Travel Area.</p>	15/01/2021 to 19/09/2021
	Regulations 5J(1)(a)-(c)	<p>Failure, without reasonable excuse, to comply with a requirement relating to testing on arrival in Scotland: to book and pay for test; to provide personal details; to undertake test (or to ensure that child for whom responsible complies); to quarantine.</p>	15/02/2021 to 19/09/2021

	Regulation 9(1)	<p>Contravening a requirement to:</p> <ul style="list-style-type: none"> • On arrival in Scotland, travel without undue delay to their specified address and to quarantine there; or • For another person residing at the same address to quarantine. This was only applicable to travellers from certain places (and only applied from 07/11/2020 to 27/11/2020 and 23/12/2020 to 08/01/2021); • For any person with responsibility for a child to ensure, so far as reasonably practicable, that the child complies with this regulation. <p>The latter was subject to a defence of reasonable excuse. The requirements relating to quarantine were subject to a defence containing an exhaustive list of permitted reasons.</p>	08/06/2020 to 19/09/2021
	Regulation 9(2)	<p>Contravening a requirement imposed by a constable: directing persons to return to their place of quarantine, removing them there, giving related instructions, or giving directions or instructions to individuals with responsibility for children.</p> <p>Subject to a defence of reasonable excuse.</p>	08/06/2020 to 19/09/2021
	Regulation 9(3)	<p>Knowingly or recklessly providing false or misleading information for purposes of parts 3 (quarantine) or 4 (enforcement of part 3).</p> <p>Subject to a defence of reasonable excuse.</p>	08/06/2020 to 19/09/2021
	Regulation 9(4)	<p>Deliberately obstructing a person carrying out a function under these regulations.</p> <p>Subject to a defence of reasonable excuse.</p>	08/06/2020 to 19/09/2021

The Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020	Regulation 6(1)	<p>Failure of an operator to provide required information to passengers before booking, 24 to 48 hours before departure (from 30/10/2020 to 19/09/2021); before check-in and during the journey.</p> <p>The latter was subject to a defence of reasonable excuse. Regulation 6 also contained other defences relating to some of these requirements.</p>	08/06/2020 to 19/09/2021
The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020	Regulation 7(1)	<p>Contravening a requirement to close premises and businesses within the local government area of Aberdeen City.</p> <p>Subject to a defence of reasonable excuse.</p>	05/08/2020 to 25/08/2020
	Regulation 7(2)	<p>Obstructing a person carrying out a function under these regulations.</p> <p>Subject to a defence of reasonable excuse.</p>	05/08/2020 to 25/08/2020
	Regulation 7(3)	<p>Failing to comply with a prohibition notice given by a relevant person under these regulations.</p> <p>Subject to a defence of reasonable excuse.</p>	05/08/2020 to 25/08/2020
The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020	Regulation 12(1)	<p>Contravening a direction given by a local authority imposing prohibitions, requirements or restrictions in relation to specified premises, specified events, or specified public outdoor places.</p> <p>Subject to a defence of reasonable excuse.</p>	28/08/2020 to 24/09/2022
	Regulation 12(2)	<p>Contravening a requirement:</p> <ul style="list-style-type: none"> For owner/occupier/person responsible for land to which a local authority direction relates, to take all reasonable steps to prevent or restrict public access to that land; or For any person to enter or remain in a specified public outdoor place to which a local authority direction relates. <p>Subject to a defence of reasonable excuse.</p>	28/08/2020 to 24/09/2022

	Regulation 12(3)	Failure to comply with a direction given by a constable, or a reasonable instruction or prohibition notice given by a relevant person under these regulations. Subject to a defence of reasonable excuse.	28/08/2020 to 24/09/2022
	Regulation 12(4)	Obstructing a person carrying out a function under these regulations. Subject to a defence of reasonable excuse.	28/08/2020 to 24/09/2022
The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020	Regulation 15(1)	Contravening a requirement in the regulation (including restrictions on public gatherings and parties/ gatherings in private dwellings). Subject to a defence of reasonable excuse.	14/09/2020 to 01/11/2020*
	Regulation 15(2)	Obstructing any person carrying out a function under these regulations. Subject to a defence of reasonable excuse.	14/09/2020 to 01/11/2020*
	Regulation 15(3)	Contravening a direction, failing to comply with an instruction or prohibition notice given by a relevant person. Subject to a defence of reasonable excuse.	14/09/2020 to 01/11/2020* <i>*These regulations were effectively suspended from 9th and 10th October 2020</i>
The Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020	Regulation 26(1)	Contravening a requirement in the regulations (including restrictions on public gatherings and parties/ gatherings in private dwellings). Subject to a defence of reasonable excuse.	09/10/2020 to 01/11/2020
	Regulation 26(2)	Obstructing any person carrying out a function under these regulations. Subject to a defence of reasonable excuse.	09/10/2020 to 01/11/2020

	Regulation 26(3)	Contravening a direction, failing to comply with an instruction or prohibition notice given by a relevant person (subject to a defence of reasonable excuse).	09/10/2020 to 01/11/2020
The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020	Regulation 5(1)	Contravening a requirement in the regulations (including restrictions on public and private gatherings, on leaving and entering Scotland, movement between local authority areas and, for “level 4” areas, a requirement to stay at home). Subject to a defence of reasonable excuse.	02/11/2020 to 08/08/2021
	Regulation 5(2)	Obstructing any person carrying out a function under these regulations. Subject to a defence of reasonable excuse.	02/11/2020 to 08/08/2021
	Regulation 5(3)	Contravening a direction, failing to comply with an instruction or prohibition notice given by a relevant person. Subject to a defence of reasonable excuse.	02/11/2020 to 08/08/2021
	Regulation 7(12)	Failing, without reasonable excuse, to provide one’s name and address when required to do so for purposes of issuing a FPN.	02/11/2020 to 08/08/2021
The Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021	Regulation 8(1)	Failure of an operator to ensure that passengers arriving at a port in Scotland: <ul style="list-style-type: none"> • complete a Passenger Locator Form, and (if applicable) possess evidence that they are exempt from the requirements to test and quarantine; • include, in their Passenger Locator Form, the name of the test provider and the reference number (from 15/02/2021); • include, in their Passenger Locator Form, the booking reference for the managed self-isolation package (from 15/01/2021); • to be in possession of the required evidence, if they are an eligible 	15/01/2021 to 19/08/2021

		<p>vaccinated arrival (from 19/07/2021);</p> <ul style="list-style-type: none"> • are in possession of notification of a negative test result; or • if travelling on a civilian aircraft, only arrive at certain ports, unless for emergency reasons (from 15/02/2021). <p>Regulation 8 contained defences relating to different requirements.</p>	
The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021	Regulation 16(1)	<p>Contravening a requirement in these regulations.</p> <p>Subject to a defence of reasonable excuse.</p>	09/08/2021 to 17/04/2022
	Regulation 16(2)	<p>Obstructing a person carrying out a function under these regulations.</p> <p>Subject to a defence of reasonable excuse.</p>	09/08/2021 to 17/04/2022
	Regulation 16(3)	<p>Contravening a direction by a relevant person.</p> <p>Subject to a defence of reasonable excuse.</p>	09/08/2021 to 17/04/2022
	Regulation 17(12)	<p>Failing, without reasonable excuse, to provide one's name and address when required to do so for purposes of issuing a FPN</p>	09/08/2021 to 17/04/2021
The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021	Regulation 28(1)	<p>Contravene requirements to, on arrival in Scotland: provide passenger information; provide evidence that this obligation has been complied with, if requested by an immigration officer; update passenger information, where this is no longer accurate; provide passenger information for children under their responsibility.</p> <p>Subject to a defence of reasonable excuse.</p>	20/09/2021 to 17/03/2022
	Regulation 28(2)	<p>Knowingly or recklessly providing false or misleading information in relation to the requirements to provide/update passenger information.</p> <p>Subject to a defence of reasonable excuse.</p>	20/09/2021 to 17/03/2022

	Regulation 29(1)	<p>Contravening requirements relating to possession of a negative test result, on arrival in Scotland.</p> <p>Subject to a defence of reasonable excuse. Also subject to a defence that the person reasonably believed that the notification of a negative result was valid and from a qualifying test.</p>	20/09/2021 to 17/03/2022
	Regulation 30(1)	<p>Contravening requirements, on arrival in Scotland, relating to possession of a testing package, providing information for children and undertaking tests.</p> <p>Subject to a defence of reasonable excuse.</p>	20/09/2021 to 17/03/2022
	Regulation 31(1)	<p>Contravening requirements, when travelling to Scotland:</p> <ul style="list-style-type: none"> • if travelling on a civilian aircraft, to enter Scotland only at certain ports, unless for emergency reasons; • to be in possession of a managed isolation package; and • for travellers from “red list” countries to travel directly to and quarantine at managed accommodation; and to ensure, so far as reasonably practicable that a child for whom they have responsibility complies with this. <p>The latter was subject to a defence containing an exhaustive list of exceptions. The other requirements were subject to a defence of reasonable excuse.</p>	20/09/2021 to 17/03/2022
	Regulation 32(1)	<p>Contravening requirements, when travelling to Scotland (for those not arriving from “red list” countries):</p> <ul style="list-style-type: none"> • to travel, without undue delay, to their specified address and to quarantine there; and 	20/09/2021 to 17/03/2022

		<ul style="list-style-type: none"> to ensure, so far as reasonably practicable, that any child for whom they have responsibility complies with this. <p>The main requirement was subject to a defence containing an exhaustive list of exceptions. The requirement relating to a child was subject to a defence of reasonable excuse.</p>	
	Regulation 34(1)	<p>Contravening a requirement given by a constable, in exercise of their powers to direct that a person return to their place of quarantine or to remove them there.</p> <p>Subject to a defence of reasonable excuse.</p>	20/09/2021 to 17/03/2022
	Regulation 34(2)	<p>Knowingly or recklessly providing false or misleading information in relation to the requirements relating to managed accommodation, quarantine at another address and enforcement powers in these regulations.</p> <p>Subject to a defence of reasonable excuse.</p>	20/09/2021 to 17/03/2021
	Regulation 34(3)	<p>Deliberately obstructing any person carrying out a function under these regulations.</p> <p>Subject to a defence of reasonable excuse.</p>	20/09/2021 to 17/03/2021
	Regulation 45(1)	<p>Failure of an operator to comply with obligations imposed upon them, relating to steps to be taken by them before and during journey.</p> <p>Regulation 45 contained defences relating to different requirements.</p>	20/09/2021 to 17/03/2022
	Regulation 45(2)	<p>Failure of operator to comply with obligations imposed upon them, relating to obligations to ensure that certain things done by passengers.</p> <p>Regulation 45 contained defences relating to different requirements.</p>	20/09/2021 to 17/03/2022

2. Rules relating to social gatherings

The following size of social gatherings were the maximum which were legally-permitted – subject to exceptions for certain reasons. I have excluded the (convoluted) rules relating to under 18-year-olds.

March 2020 regulations

Public gatherings

As introduced (26th March 2020)

- No more than two people from different households

From 29th May 2020

- No more than two people (except from no more than two households)³⁶⁸

From 19th June 2020

- No more than two people, except where from no more than three households)

From 10th July 2020

- Outdoors – gatherings permitted where participants from no more than five households;
- Indoors – no more than three households

Private dwellings

From 28th August 2020

- No “parties” in private dwellings – i.e. 16 or more persons

September 2020 regulations

Public gatherings

As introduced (14th September 2020)

- No more than 6 persons from no more than 2 households

Private dwellings (indoors or outdoors)

³⁶⁸ It is not clear that this was meaningfully different from the previous rule.

No more than 6 persons from no more than 2 households.

26/09/20 - Amended so that indoor gatherings in dwellings prohibited

- No “parties” in private dwellings – i.e. 16 or more persons

Additional Temporary Measures regulations

Came into force 9/10/20.

Public gatherings - Same limit as September 2020 regulations inside and outside of the “protected area”

*Inside and outside of protected area – must not attend a gathering in private dwelling unless outdoors and no more than 6 persons from no more than 2 households. **Gatherings in private dwellings not permitted indoors.***

No “parties” in private dwellings – i.e. 16 or more persons

Local Levels regulations

Public indoor gatherings

As introduced (2nd November 2020)

- Level 0 – no more than 8 persons from no more than 3 households
- Levels 1-4 – no more than 6 persons from no more than 2 households

From 5th January 2021

- Level 0 – as above (8 from 3)
- Level 1 – as above (6 from 2)
- Level 2 – as above (6 from 2)
- Level 3 – as above (6 from 2)
- Level 4 – no more than 2 persons from no more than 2 households

From 12th March 2021

- Level 0 – no more than 8 persons from no more than 3 households (as above)
- Levels 1-3 – no more than 6 persons from no more than 2 households (as above)
- Level 4 – no more than 4 persons from no more than 2 households

From 26th April 2021

- Level 0 – no more than 10 persons from no more than 4 households
- Level 1 – no more than 8 persons from no more than 3 households
- Level 2 – no more than 6 persons from no more than 3 households

- Level 3 – no more than 6 persons from no more than 2 households
- Level 4 – no more than 4 persons from no more than 2 households

Public outdoor gatherings

As introduced (2nd November 2020)

- Level 0 – no more than 15 persons from no more than 5 households
- Levels 1-
 - Until 18/11/20 - no more than 6 persons from no more than 2 households
 - From 19/11/20 – no more than 8 persons from no more than 3 households
- Levels 2-4 – no more than 6 persons from no more than 2 households

From 5th January 2021

- Level 0 – as above (15 from 5)
- Level 1 – as above
- Level 2 – as above (6 from 2)
- Level 3 – as above (6 from 2)
- Level 4 – no more than 2 persons from no more than 2 households

From 12th March 2021

- Level 0 – no more than 8 persons from no more than 3 households (as above)
- Levels 1-3 – no more than 6 persons from no more than 2 households (as above)
- Level 4 – no more than 4 persons from no more than 2 households

From 16th April 2021

- Levels 0-2 and 4 – as above
- Level 3 – no more than 6 persons from no more than 6 households

From 26th April 2021

- Level 0 – no more than 15 persons from no more than 15 households
- Level 1 – no more than 12 persons from no more than 12 households
- Level 2 – no more than 8 persons from no more than 8 households
- Level 3 – no more than 6 persons from no more than 6 households
- Level 4 – no more than 4 persons from no more than 2 households

Gatherings in private dwellings

As introduced (2nd November 2020)

- Level 0
 - Outdoors – no more than 15 persons from no more than 15 households
 - Indoors – no more than 8 persons from no more than 3 households
- Levels 1-4
 - Outdoors – no more than 6 persons from no more than 2 households
 - Indoors – prohibited

From 13th November 2020

- Levels 0 and 2-4 – as above
- Level 1 – as above
 - Outdoors – no more than 6 persons from no more than 2 households
 - Indoors – no more than 6 persons from no more than 2 households

From 20th November 2020

- Level 0 – as above
- Level 1
 - Outdoors – no more than 8 from no more than 3 households
 - Indoors - prohibited
- Level 2 – as above
- Level 3 – as above
- Level 4 – as above

From 11th December 2020

- Levels 0-4 – as above

From 5th January 2021

- Level 0 – as above (15 from 5)
- Level 1 – as above
- Level 2 – as above (6 from 2)
- Level 3 – as above (6 from 2)
- Level 4 – no more than 2 persons from no more than 2 households

From 12th March 2021

- Level 0 – as above
- Level 1 – as above
- Level 2 – as above
- Level 3 –
 - Outdoors - no more than 6 persons from no more than 2 households (as above)
 - Indoors – prohibited (as above)
- Level 4 –
 - Outdoors - no more than 4 persons from no more than 2 households
 - Indoors – prohibited

From 16th April 2021

- Levels 0-2 and 4 – as above
- Level 3-4
 - Outdoors – no more than 6 persons from no more than 6 households
 - Indoors – prohibited

From 26th April 2021

- Level 0
 - Outdoors – no more than 15 persons from no more than 15 households
 - Indoors – no more than 8 persons from no more than 4 households
- Level 1
 - Outdoors – no more than 12 persons from no more than 12 households
 - Indoors – no more than 6 persons from no more than 3 households
- Level 2
 - Outdoors – no more than 8 persons from no more than 8 households
 - Indoors – no more than 4 persons from no more than 2 households
- Level 3
 - Outdoors – no more than 6 persons from no more than 6 households
 - Indoors – prohibited
- Level 4
 - Outdoors – no more than 4 persons from no more than 2 households
 - Indoors – prohibited

From 17th May 2021

- Levels 0-1
 - Outdoors – no more than 15 persons from no more than 15 households
 - Indoors – no more than 8 persons from no more than 4 households

- Level 2
 - Outdoors – no more than 8 persons from no more than 8 households
 - Indoors – no more than 6 persons from no more than 3 households
- Level 3
 - Outdoors – no more than 6 persons from no more than 6 households
 - Indoors – prohibited
- Level 4
 - Outdoors – no more than 4 persons from no more than 2 households
 - Indoors – prohibited



Freedom of Information Response

Our reference: FOI 25-0428

Responded to: 28 April 2025

Your recent request for information is replicated below, together with our response.

I'm looking to request data on the number of Fixed Penalty Notices issued for each of the Covid-19 regulations, as well as data on rescinded FPNs. I've had a look on <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>, and at previous FOI requests on a similar topic (Police refs 23-1624, 23-1696, and 24-1307) and couldn't find the data I am looking for. The spreadsheet titled "[Coronavirus Enforcement Information to 17 November 2021](#)" provides a running total for FPNs issued but does not specify the offence.

In particular, I am requesting the following:-

1. The number of Fixed Penalty Notices ("FPNs") issued for each of the following offences:-
 1. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, regulations 8(1), 8(2) and 8(3);
 2. The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020, regulations 7(1), 7(2) and 7(3);
 3. The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020, regulations 15(1), 15(2) and 15(3);
 4. The Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020, regulation 26(1), 26(2) and 26(3);
 5. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, regulations 5(1), 5(2), and 5(3); and 7(12);

- 6. The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021, regulation 16(1), 16(2) and 16(3) and 17(12);**
- 7. The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020, regulations 12(1), 12(2), 12(3) and 12(4);**
- 8. The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020, regulations 5(1), 5(2), 5B(1), 5J(1)(a), 5J(1)(b), 5J1(c), 9(1), 9(2), 9(3) and 9(4);**
- 9. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021, regulations 28(1), 28(2), 29(1), 30(1)(a), 30(1)(b), 30(1)(c), 31(1)(a), 31(1)(b), 31(1)(c), 31(1)(d), 34(2), 34(3), 45(1) and 45(2).**

2. Please confirm the total number of FPNs under the aforementioned regulations (if possible, broken down by offence) which were issued and later rescinded;

3. Were reasons for rescission recorded and tallied? If so, please confirm the most common reasons recorded for an FPN being rescinded.

I can advise that Police Scotland does not hold the above requested information.

In terms of Section 17 of the Act, this letter represents a formal notice that information is not held.

By way of explanation, the system that was used to record Fixed Penalty Notices related to Covid 19 is no longer available.

If you require any further assistance, please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](#) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](#), by [email](#) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

OFFICIAL

This response will be added to our [Disclosure Log](#) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.

Scottish Courts and Tribunals Service



Jamie Hilland

B Email:



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Our Ref: FOI 2025-223

Date: 27 June 2025

Dear Jamie Hilland

Freedom of Information (Scotland) Act 2002 (FOISA)

Thank you for your request for information, received by Scottish Courts and Tribunals Service (SCTS) on 10 June 2025, in which you have sought data on the number of registered Fixed Penalty Notices (FPNs).

The terms of your request was detailed as follows:

The number of Fixed Penalty Notices ("FPNs") registered for each of the following offences:-

1. *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, regulations 8(1), 8(2) and 8(3) - I understand that the relevant charge code was "HEPR202008010000".*
2. *The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020, regulations 7(1), 7(2) and 7(3);*
3. *The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020, regulations 15(1), 15(2) and 15(3);*
4. *The Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020, regulation 26(1), 26(2) and 26(3);*
5. *The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, regulations 5(1), 5(2), and 5(3); and 7(12);*
6. *The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021, regulation 16(1), 16(2) and 16(3) and 17(12);*
7. *The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020, regulations 12(1), 12(2), 12(3) and 12(4);*
8. *The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020, regulations 5(1), 5(2), 5B(1), 5J(1)(a), 5J(1)(b), 5J(1)(c), 9(1), 9(2), 9(3) and 9(4);*
9. *The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021, regulations 28(1), 28(2), 29(1), 30(1)(a), 30(1)(b), 30(1)(c), 31(1)(a), 31(1)(b), 31(1)(c), 31(1)(d), 34(2), 34(3), 45(1) and 45(2).*

Please confirm the total number of FPNs under the aforementioned regulations (if possible, broken down by offence) which were registered and later withdrawn.

I must firstly explain SCTS acts as a payment point for fixed penalties issued by Police Scotland for offences under The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. I therefore must give notice in terms of Section 17 of FOISA that SCTS does not hold information in respect of fixed penalties issued under any other Health Protection Coronavirus regulations.

With regards to information on fixed penalties issued for offences under The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, I am pleased to advise information on the number of fixed penalties imposed and collection rates is contained within the SCTS Courts Data Scotland: Fines (CDSF) workbook which is published on the SCTS website:

[Courts Data Scotland: Fines \(CDSF\) | Scottish Courts and Tribunals Service](#)

The latest update, containing information on Coronavirus Fixed Penalties, was published on 22 May 2025 – Edition 64, which can be accessed via the following link:

[Courts Data Scotland: Fines \(CDSF\) – Edition 64](#)

The latest data available can be accessed within the tab marked '[Police Covid Fixed Penalties](#)' which provides the latest data available, as at 14 April 2025, in respect of Police Covid Fixed Penalties imposed between 26 March 2020 and 31 March 2022. I can also advise that the SCTS Courts Data Scotland: Fines Edition 63 will be published on 21 August 2025. Once available this will be accessible via the first link provided above.

As this information is publicly accessible on our website, an exemption has been applied to this part of your request in terms of Section 25 FOISA – information otherwise accessible. This is an absolute exemption and not subject to the public interest test.

In case it may be of further interest, Police Scotland publish enforcement and response data on their website also, which includes penalty notices issued and numbers of arrests:

[Police Scotland – Enforcement and Response data](#)

Should you wish to enquire further with regards information published by Police Scotland, you should contact Police Scotland to request any further information: foi@scotland.pnn.police.uk

I hope you find this information helpful. However, should you feel dissatisfied with this decision or the manner in which your request has been handled, the Act provides for a review process to be conducted. Should you wish to take advantage of this process you may apply in writing for a review. Your request should provide details of why you wish a review to be carried out and should be made within 40 working days of receipt of this letter to:-

The Freedom of Information Officer
Scottish Courts and Tribunals Service
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD
foi@scotcourts.gov.uk

Following that review should you still feel dissatisfied, you have the right to lodge an appeal with the Scottish Information Commissioner either online:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>

or at the following address:-

Office of the Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St. Andrews
FIFE
KY16 9DS

Yours sincerely

Tara McNamara

Information & Correspondence Manager



**CROWN OFFICE
& PROCURATOR
FISCAL SERVICE**

SCOTLAND'S PROSECUTION SERVICE

Information Governance and
Security Assurance Unit
Crown Office
25 Chambers Street
Edinburgh EH1 1LA

PRIVATE AND CONFIDENTIAL

Jamie Hilland

Tel: 0300 020 3000

By Email

Our ref: R-14071-25



20 February 2025

Dear Jamie Hilland

I refer to your e-mail of 2 February 2025 in which you requested the following information:

1. *The number of charges reported to COPFS for each of the following offences:-*
 - a) *The Coronavirus Act 2020, Schedule 21, paragraphs 45(1)(a), 45(1)(b), 45(1)(c), 45(1)(d) and 45(1)(e). My understanding is that these are recorded as separate charge codes, however if you only hold data for paragraph 45(1) as a whole then that is completely fine (the same goes for any of these offences).*
 - b) *The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020, regulations 5(1), 5(2), 5B(1), 5J(1)(a), 5J(1)(b), 5J1(c), 9(1), 9(2), 9(3) and 9(4)*
 - c) *The Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020, regulation 6(1)*
 - d) *The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020, regulations 7(1), 7(2) and 7(3)*
 - e) *The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020, regulations 12(1), 12(2), 12(3) and 12(4)*
 - f) *The Health Protection (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, regulation 17(12)*
 - g) *The Health Protection (Coronavirus) (Pre-Departure Testing and Operators Liability) (Scotland) Regulations 2021, regulation 8(1)*



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- h) The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021, regulations 17(12)*
- i) The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021, regulations 28(1), 28(2), 29(1), 30(1)(a), 30(1)(b), 30(1)(c), 31(1)(a), 31(1)(b), 31(1)(c), 31(1)(d), 34(2), 34(3), 45(1) and 45(2).*
- 2. Marking decisions in respect of each of these offences: the number dealt with by direct measure/diversion (if possible, subdivided into type); the number marked “no action”; the number for marked for court proceedings; and the forum.*
- 3. In relation to cases marked for court proceedings, the number of convictions and acquittals. If possible, it would be useful to know the number of convictions after trial/following guilty pleas; and the number acquitted after trial/by pleas of Not Guilty being accepted.*

This request will be managed by The Crown Office and Procurator Fiscal Service under the Freedom of Information Act (Scotland) 2002 (FOISA).

Please see the attached Annex A, which provides the information requested. This information is accurate as of 10 February 2025.

If you are dissatisfied with the COPFS response to your FOI request, you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 20 working days of receipt.

The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request.

Under section 47(1) of FOISA if you remain dissatisfied with the response following a review you have the right to appeal to the Scottish Information Commissioner within six months of receiving the review.

Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case by case basis.

Yours sincerely

FC
Information Governance and Security Assurance Unit
Policy & Engagement
COPFS



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Coronavirus charges reported to COPFS
Position as at 10 February 2025

Charge	Total
The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply Coronavirus (Local Levels) Regulation	1,068
The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	760
The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(1) - Failure to comply with Coronavirus (Additional Temporary Measures) Regulations	133
The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(1) - Failure to comply with coronavirus regulations	110
The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 R15(1) - Fail comply Coronavirus Regs	90
The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(3) - Contravening a Direction Instruction or Prohibition Notice under Reg 7 Coronavirus Regs	69
The Coronavirus Act 2020 Sch22 P21(1) - Fail to comply with a prohibition, requirement or restriction under Part 3, Schedule 22	45
The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(3) - Failure to comply with coronavirus regulations	42
The Coronavirus Act 2020 Sch21 P45(1)(a) - Fail to comply with a direction, instruction, requirement or restriction under Part 3 Schedule 21	33
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(1) - Failure to travel to or stay within specified premises Coronavirus International Travel Regs	30
The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(3) - Contravening a Direction Instruction Prohibition Notice under Reg 4 Coronavirus (Local Level) Regs	23
The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(2) - Obstructing a person carrying out a function under Coronavirus Regulations	16
The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 R16(1) - Contravening requirement of Coronavirus Legislation, failing to comply with regulations	12
The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(2) - Obstruct carrying out function Coronavirus Local Level Regs	9
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(2) - in that you did contravene a requirement imposed under Reg 8	8
The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(2)(B) - Failure to comply with coronavirus regulations	7
The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 R15(3) - Contravene Direct Instruct or Prohib Notice Coronavirus Regs	7
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(1) - Failure by you/child to travel directly to accommodation using designated transport and/or remain within	5
The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(2)(A) - Failure to comply with coronavirus regulations	3
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(1) - Failure by you/child to enter Scotland at one of designated ports or possess a managed self-isolation package	3
The Coronavirus Act 2020 Sch21 P45(1)(e) - Obstruct person exercising a power under Part 3 of Schedule 21	3
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(4) - Obstructing a person carrying out a function under Coronavirus International Travel Regs	3
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R5(1) - in that you did fail to provide passenger information	2
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(3) - Provide false or misleading information re quarantine	2
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R5J(1)(a) - Fail to possess or provide evidence test package for you or child 11 or older	1
The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 R7(1) - Failure to comply with Coronavirus Regulations Aberdeen City	1
The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(2) - Obstruct a person carrying out a function under Coronavirus (Additional Temporary Measures) Regulations	1
The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(3) - Contravene a Direction/Instruction/Prohibition Notice under Coronavirus (Additional Temporary Measures) Regulations	1
Total	2,487

Coronavirus charges reported to COPFS
Position as at 10 February 2025

Charge	Action taken re Subject	Action taken re Charge	Outcome	Total
The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply with Coronavirus (Local Levels) Regulation	Solemn	Court	Convicted	1
			Not Convicted	6
			No Further Action	7
		Court Total		14
		Not Separately Actioned	Not Separately Actioned	18
	Solemn Total			32
	Summary	Court	Convicted	119
			Not Convicted	174
			Ongoing	6
			No Further Action	67
		Court Total		366
		Not Separately Actioned	Not Separately Actioned	53
	Summary Total			419
	Direct Measure	Combined	Accepted	1
		Fiscal Fine	Accepted	351
			Ongoing	5
			No Further Action	14
		Fiscal Fine Total		370
		Fixed Penalty	Accepted	5
		Diversion	Completed	49
			No Further Action	19
		Diversion Total		68
		Work Offer	Work Offer	1
		Reporter	Reporter	15
		Warning	Warning	73
		Not Separately Actioned	Not Separately Actioned	19
	Direct Measure Total			552
	No Action Total			65
Total				1,068
The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	Solemn	Court	Convicted	3
			Not Convicted	39
			No Further Action	9
		Court Total		51
		No Decision	No Decision	1
		Not Separately Actioned	Not Separately Actioned	42
	Solemn Total			94
	Summary	Court	Convicted	78
			Not Convicted	147
			Ongoing	2
			No Further Action	48
		Court Total		275
		Not Separately Actioned	Not Separately Actioned	80
	Summary Total			355
	Direct Measure	Fiscal Fine	Accepted	153
			No Further Action	17
		Fiscal Fine Total		170
		Diversion	Completed	7
			No Further Action	1
		Diversion Total		8
		Reporter	Reporter	29
		Warning	Warning	26
		Not Separately Actioned	Not Separately Actioned	20
	Direct Measure Total			253
	No Action Total			58
Total				760
The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(1) - Failure to comply with Coronavirus (Additional Temporary Measures) Regulations	Solemn	Court	Convicted	1
		Court Total		1
		Not Separately Actioned	Not Separately Actioned	2
	Solemn Total			3
	Summary	Court	Convicted	13
			Not Convicted	22
			Ongoing	2
			No Further Action	9
		Court Total		46

		No Decision	No Decision	1
		Not Separately Actioned	Not Separately Actioned	15
	Summary Total			62
	Direct Measure	Fiscal Fine	Accepted	38
			No Further Action	1
		Fiscal Fine Total		39
		Fixed Penalty	No Further Action	1
		Diversion	Completed	2
			No Further Action	1
		Diversion Total		3
		Warning	Warning	8
		Not Separately Actioned	Not Separately Actioned	3
	Direct Measure Total			54
	No Action Total			13
	No Decision Total			1
Total				133
The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(1) - Failure to comply with coronavirus regulations				
	Solemn	Court	Not Convicted	4
			No Further Action	4
		Court Total		8
		No Decision	No Decision	2
		Not Separately Actioned	Not Separately Actioned	6
	Solemn Total			16
	Summary	Court	Convicted	2
			Not Convicted	24
			No Further Action	7
		Court Total		33
		Not Separately Actioned	Not Separately Actioned	11
	Summary Total			44
	Direct Measure	Fiscal Fine	Accepted	18
			No Further Action	2
		Fiscal Fine Total		20
		Fixed Penalty	Accepted	1
		Diversion	Completed	3
			No Further Action	3
		Diversion Total		6
		Work Offer	Work Offer	2
		Reporter	Reporter	2
		Warning	Warning	8
		Not Separately Actioned	Not Separately Actioned	6
	Direct Measure Total			45
	No Action Total			5
Total				110
The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 R15(1) - Fail comply Coronavirus Regs				
	Solemn	Court	Convicted	1
		Court Total		1
		Not Separately Actioned	Not Separately Actioned	2
	Solemn Total			3
	Summary	Court	Convicted	2
			Not Convicted	15
			No Further Action	2
		Court Total		19
		Not Separately Actioned	Not Separately Actioned	15
	Summary Total			34
	Direct Measure	Fiscal Fine	Accepted	13
			No Further Action	1
		Fiscal Fine Total		14
		Fixed Penalty	No Further Action	2
		Diversion	Completed	3
			No Further Action	1
		Diversion Total		4
		Reporter	Reporter	7
		Warning	Warning	10
		Not Separately Actioned	Not Separately Actioned	9
	Direct Measure Total			46
	No Action Total			7
Total				90
The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(3) - Contravening a Direction Instruction or Prohibition Notice under Reg 7 Coronavirus Regs				
	Solemn	Court	Not Convicted	2
		Court Total		2
		Not Separately Actioned	Not Separately Actioned	6
	Solemn Total			8

	Summary	Court	Convicted	3
			Not Convicted	16
			No Further Action	5
		Court Total		24
		Not Separately Actioned	Not Separately Actioned	15
	Summary Total			39
	Direct Measure	Fiscal Fine	Accepted	8
			No Further Action	3
		Fiscal Fine Total		11
		Reporter	Reporter	4
		Warning	Warning	2
	Direct Measure Total			17
	No Action Total			5
Total				69
The Coronavirus Act 2020 Sch22 P21(1) - Fail to comply with a prohibition, requirement or restriction under Part 3, Schedule 22				
	Summary	Court	Convicted	7
			Not Convicted	3
			No Further Action	2
		Court Total		12
		Not Separately Actioned	Not Separately Actioned	2
	Summary Total			14
	Direct Measure	Fiscal Fine	Accepted	26
			No Further Action	1
		Fiscal Fine Total		27
		Warning	Warning	3
	Direct Measure Total			30
	No Action Total			1
Total				45
The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(3) - Failure to comply with coronavirus regulations				
	Solemn	Not Separately Actioned	Not Separately Actioned	3
	Solemn Total			3
	Summary	Court	Convicted	1
			Not Convicted	6
			No Further Action	1
		Court Total		8
		Not Separately Actioned	Not Separately Actioned	3
	Summary Total			11
	Direct Measure	Fixed Penalty	Accepted	1
		Diversion	Completed	4
			No Further Action	2
		Diversion Total		6
		Work Offer	Work Offer	1
		Reporter	Reporter	4
		Warning	Warning	5
		Not Separately Actioned	Not Separately Actioned	4
	Direct Measure Total			21
	No Action Total			7
Total				42
The Coronavirus Act 2020 Sch21 P45(1)(a) - Fail to comply with a direction, instruction, requirement or restriction under Part 3 Schedule 21				
	Solemn	Court	Convicted	1
		Court Total		1
		Not Separately Actioned	Not Separately Actioned	4
	Solemn Total			5
	Summary	Court	Convicted	4
			Not Convicted	8
			No Further Action	2
		Court Total		14
		Not Separately Actioned	Not Separately Actioned	5
	Summary Total			19
	Direct Measure	Fiscal Fine	Accepted	7
		Warning	Warning	1
	Direct Measure Total			8
	No Action Total			1
Total				33
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(1) - Failure to travel to or stay within specified premises Coronavirus International Travel Regs				
	Solemn	Court	Not Convicted	1
	Solemn Total			1
	Summary	Court	Convicted	1
			Not Convicted	4
			Ongoing	1
			No Further Action	3

		Court Total		9
		Not Separately Actioned	Not Separately Actioned	4
	Summary Total			13
	Direct Measure	Fiscal Fine	Accepted	5
			No Further Action	1
		Fiscal Fine Total		6
		Warning	Warning	7
	Direct Measure Total			13
	No Action Total			3
Total				30
The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(3) - Contravening a Direction Instruction Prohibition Notice under Reg 4 Coronavirus (Local Level) Regs				
	Solemn	Not Separately Actioned	Not Separately Actioned	1
	Solemn Total			1
	Summary	Court	Convicted	2
			Not Convicted	6
			Ongoing	1
			No Further Action	2
		Court Total		11
		Not Separately Actioned	Not Separately Actioned	2
	Summary Total			13
	Direct Measure	Fiscal Fine	Accepted	5
		Diversion	No Further Action	1
		Warning	Warning	1
	Direct Measure Total			7
	No Action Total			2
Total				23
The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(2) - Obstructing a person carrying out a function under Coronavirus Regulations				
	Solemn	Court	Not Convicted	1
	Solemn Total			1
	Summary	Court	Convicted	5
			Not Convicted	4
			No Further Action	1
		Court Total		10
	Summary Total			10
	Direct Measure	Fiscal Fine	Accepted	2
		Diversion	No Further Action	1
	Direct Measure Total			3
	No Action Total			2
Total				16
The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 R16(1) - Contravening requirement of Coronavirus Legislation, failing to comply with regulations				
	Summary	Court	Convicted	5
			Not Convicted	1
			No Further Action	1
		Court Total		7
		Not Separately Actioned	Not Separately Actioned	2
	Summary Total			9
	No Action Total			3
Total				12
The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(2) - Obstruct carrying out function Coronavirus Local Level Regs				
	Summary	Court	Convicted	1
			Not Convicted	2
			No Further Action	1
		Court Total		4
	Summary Total			4
	Direct Measure	Fiscal Fine	Accepted	3
		Not Separately Actioned	Not Separately Actioned	2
	Direct Measure Total			5
Total				9
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(2) - in that you did contravene a requirement imposed under Reg 8				
	Summary	Court	Convicted	1
			Not Convicted	1
		Court Total		2
		Not Separately Actioned	Not Separately Actioned	2
	Summary Total			4
	Direct Measure	Fiscal Fine	Accepted	2
		Diversion	Completed	1
	Direct Measure Total			3
	No Action Total			1

Total				8
The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(2)(B) - Failure to comply with coronavirus regulations	Solemn	Not Separately Actioned	Not Separately Actioned	2
	Solemn Total			2
	Summary	Court	No Further Action	1
		Not Separately Actioned	Not Separately Actioned	1
	Summary Total			2
	Direct Measure	Warning	Warning	2
		Not Separately Actioned	Not Separately Actioned	1
	Direct Measure Total			3
Total				7
The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 R15(3) - Contravene Direct Instruct or Prohib Notice Coronavirus Regs	Summary	Court	Convicted	2
			Not Convicted	2
		Court Total		4
		Not Separately Actioned	Not Separately Actioned	2
	Summary Total			6
	Direct Measure	Warning	Warning	1
Total				7
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(1) - Failure by you/child to travel directly to accommodation using designated transport and/or remain within	Summary	Court	Convicted	1
	Summary Total			1
	Direct Measure	Fiscal Fine	Accepted	2
	Direct Measure Total			2
	No Action Total			2
Total				5
The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(2)(A) - Failure to comply with coronavirus regulations	Summary	Court	Convicted	1
	Summary Total			1
	Direct Measure	Warning	Warning	1
	Direct Measure Total			1
	No Action Total			1
Total				3
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(1) - Failure by you/child to enter Scotland at one of designated ports or possess a managed self-isolation package	Summary	Not Separately Actioned	Not Separately Actioned	3
	Summary Total			3
Total				3
The Coronavirus Act 2020 Sch21 P45(1)(e) - Obstruct person exercising a power under Part 3 of Schedule 21	Solemn	Not Separately Actioned	Not Separately Actioned	3
	Solemn Total			3
Total				3
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(4) - Obstructing a person carrying out a function under Coronavirus International Travel Regs	No Action	No Action	No Action	3
	No Action Total			3
Total				3
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R5(1) - in that you did fail to provide passenger information	Summary	Court	Not Convicted	1
	Summary Total			1
	Direct Measure	Fiscal Fine	No Further Action	1
	Direct Measure Total			1
Total				2
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(3) - Provide false or misleading information re quarantine	Summary	Court	Convicted	1
		Not Separately Actioned	Not Separately Actioned	1
	Summary Total			2
Total				2
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R5J(1)(a) - Fail to possess or provide evidence test package for you or child 11 or older	Direct Measure	Fiscal Fine	No Further Action	1
	Direct Measure Total			1
Total				1

The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 R7(1) - Failure to comply with Coronavirus Regulations Aberdeen City	Direct Measure	Fiscal Fine	Accepted	1
	Direct Measure Total			1
Total				1
The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(2) - Obstruct a person carrying out a function under Coronavirus (Additional Temporary Measures) Regulations	Direct Measure	Not Separately Actioned	Not Separately Actioned	1
	Direct Measure Total			1
Total				1
The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(3) - Contravene a Direction/Instruction/Prohibition Notice under Coronavirus (Additional Temporary Measures) Regulations	Summary	Court	Not Convicted	1
	Summary Total			1
Total				1
Grand Total				2,487

Note:-

Not Separately Actioned

No action was taken against the charge but action (prosecution in court or direct measure) was taken against the accused.
Some of the libel in the charge may have been incorporated into a charge that was actioned.

The figures given for Diversion and Reporter cover charges where the accused was offered a Diversion, or sent to the Reporter.
It is not possible without manual checking to confirm that the individual charge was included in the Diversion offer or Reporter referral.

Coronavirus charges reported to COPFS
Position as at 10 February 2025
Charges Convicted/Not Convicted

Outcome	Verdict	Charge	Total
Convicted	Found Guilty	The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply Coronavirus (Local Levels) Regulation	8
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	2
		The Coronavirus Act 2020 Sch21 P45(1)(a) - Fail to comply with a direction, instruction, requirement or restriction under Part 3 Schedule 21	1
	Found Guilty Total		11
	Pled Guilty	The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply Coronavirus (Local Levels) Regulation	112
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	79
		The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(1) - Failure to comply with Coronavirus (Additional Temporary Measures) Regulations	14
		The Coronavirus Act 2020 Sch22 P21(1) - Fail to comply with a prohibition, requirement or restriction under Part 3, Schedule 22	7
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(2) - Obstructing a person carrying out a function under Coronavirus Regulations	5
		The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 R16(1) - Contravening requirement of Coronavirus Legislation, failing to comply with regulations	5
		The Coronavirus Act 2020 Sch21 P45(1)(a) - Fail to comply with a direction, instruction, requirement or restriction under Part 3 Schedule 21	4
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(3) - Contravening a Direction Instruction or Prohibition Notice under Reg 7 Coronavirus Regs	3
		The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 R15(1) - Fail comply Coronavirus Regs	3
		The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(3) - Contravening a Direction Instruction Prohibition Notice under Reg 4 Coronavirus (Local Level) Regs	2
		The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(1) - Failure to comply with coronavirus regulations	2
		The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 R15(3) - Contravene Direct Instruct or Prohib Notice Coronavirus Regs	2
		The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(2) - Obstruct carrying out function Coronavirus Local Level Regs	1
		The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(2)(A) - Failure to comply with coronavirus regulations	1
		The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(3) - Failure to comply with coronavirus regulations	1
		The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(2) - in that you did contravene a requirement imposed under Reg 8	1
		The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(1) - Failure by you/child to travel directly to accommodation using designated transport and/or remain within	1
		The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(3) - Provide false or misleading information re quarantine	1
		The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(1) - Failure to travel to or stay within specified premises Coronavirus International Travel Regs	1
	Pled Guilty Total		245
Convicted Total			256
Not Convicted	Accepted Not Guilty	The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	171
		The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply Coronavirus (Local Levels) Regulation	167
		The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(1) - Failure to comply with coronavirus regulations	26
		The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(1) - Failure to comply with Coronavirus (Additional Temporary Measures) Regulations	20
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(3) - Contravening a Direction Instruction or Prohibition Notice under Reg 7 Coronavirus Regs	16
		The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 R15(1) - Fail comply Coronavirus Regs	14
		The Coronavirus Act 2020 Sch21 P45(1)(a) - Fail to comply with a direction, instruction, requirement or restriction under Part 3 Schedule 21	8
		The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(3) - Failure to comply with coronavirus regulations	6
		The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(1) - Failure to travel to or stay within specified premises Coronavirus International Travel Regs	5
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(2) - Obstructing a person carrying out a function under Coronavirus Regulations	5

		The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(3) - Contravening a Direction Instruction Prohibition Notice under Reg 4 Coronavirus (Local Level) Regs	5
		The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 R15(3) - Contravene Direct Instruct or Prohib Notice Coronavirus Regs	2
		The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(2) - Obstruct carrying out function Coronavirus Local Level Regs	2
		The Coronavirus Act 2020 Sch22 P21(1) - Fail to comply with a prohibition, requirement or restriction under Part 3, Schedule 22	2
		The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R5(1) - in that you did fail to provide passenger information	1
		The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 R9(2) - in that you did contravene a requirement imposed under Reg 8	1
		The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 R16(1) - Contravening requirement of Coronavirus Legislation, failing to comply with regulations	1
	Accepted Not Guilty Total		452
	Acquitted	The Health Protection (Coronavirus, Restrictions) (Directions by L.A.) (Scotland) Regulations 2020 R12(1) - Failure to comply with coronavirus regulations	2
		The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply Coronavirus (Local Levels) Regulation	2
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	1
		The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(1) - Failure to comply with Coronavirus (Additional Temporary Measures) Regulations	1
	Acquitted Total		6
	Deserted Simpliciter	The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	10
		The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply Coronavirus (Local Levels) Regulation	2
		The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(3) - Contravene a Direction/Instruction/Prohibition Notice under Coronavirus (Additional Temporary Measures) Regulations	1
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(3) - Contravening a Direction Instruction or Prohibition Notice under Reg 7 Coronavirus Regs	1
		The Coronavirus Act 2020 Sch22 P21(1) - Fail to comply with a prohibition, requirement or restriction under Part 3, Schedule 22	1
		The Health Protection (Coronavirus)(Restrictions and Requirements)(Additional Temporary)Regulations 2020 R26(1) - Failure to comply with Coronavirus (Additional Temporary Measures) Regulations	1
	Deserted Simpliciter Total		16
	Dismissed	The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	1
		The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 R15(1) - Fail comply Coronavirus Regs	1
	Dismissed Total		2
	Found Guilty (Absolute Discharge)	The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(3) - Contravening a Direction Instruction Prohibition Notice under Reg 4 Coronavirus (Local Level) Regs	1
		The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply Coronavirus (Local Levels) Regulation	1
	Found Guilty (Absolute Discharge) Total		2
	Found Not Guilty	The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply Coronavirus (Local Levels) Regulation	6
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(3) - Contravening a Direction Instruction or Prohibition Notice under Reg 7 Coronavirus Regs	1
		The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	1
	Found Not Guilty Total		8
	Not Proven	The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	1
	Not Proven Total		1
	Pled Guilty (Absolute Discharge)	The Health Protection (Coronavirus) (R&R) (Local Levels) (Scotland) Regulations 2020 R5(1) - Failure to comply Coronavirus (Local Levels) Regulation	2
	Pled Guilty Total		2
	Withdrawn	The Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 R8(1) - Failure to comply with Coronavirus Regulations	1
	Withdrawn Total		1
Not Convicted Total			490
Grand Total			746

Note:-

A pled or found guilty verdict in Summary court proceedings is not a conviction where the disposal is Absolute Discharge

APPENDIX 5 – CHARGES IN REPORTS WITH CHARGES UNDER COVID-19 LEGISLATION ONLY

CASES REPORTED CONTAINING COVID-19 CHARGES ONLY
Total - 578 reports (822 charges)

Coronavirus Act 2020, Schedule 21, Para 45(1)(a)	11	
	Summary complaint (Sheriff Court)	3
	Fiscal fine (£125)	5
	Fiscal fine (£50)	1
	Roll up	1
	No action	1
Coronavirus Act 2020, Schedule 22, Para 21	34	
	Summary complaint (Sheriff Court)	2
	Fiscal fine (£400)	2
	Fiscal fine (£250)	1
	Fiscal fine (£175)	4
	Fiscal fine (£125)	4
	FF (£50) refused. Summary complaint (JP Court)	1
	Fiscal fine (£50)	16
	PF Warning Letter	3
	No action	1
March 2020 regulations, reg 8(1)	183	
	Petition. Not indicted.	2
	Summary complaint (Sheriff Court)	26
	Summary complaint (JP Court)	11
	Fiscal fine (£175) refused. Summary complaint (JP Court)	1
	Fiscal fine (£125) refused. Summary complaint (JP Court)	1
	Fiscal fine (£500)	2
	Fiscal fine (£325)	1
	Fiscal fine (£250)	5
	Fiscal fine (£175)	5
	Fiscal fine (£125)	26
	FF (£50). Withdrawn, no further action	1
	Fiscal fine (£50)	17
	PF Warning Letter	17
	Diversion to social work	1
	Failed social work diversion, no further action	1
	Referred to Children's Reporter	13
	No action	36
	Rolled into another case (duplicate)	17
March 2020 regs, reg 8(2)	1	
	Fiscal fine (£50)	1
March 2020 regs, reg 8(3)	2	
	Fiscal fine (£125)	1
	No action	1
Additional Temporary Measures, reg 26(1)	1	
	Summary complaint (Sheriff Court)	1
Directions by Local Authorities regs, reg 12(1)	24	
	Fiscal fine (£125)	1
	Fiscal fine (£100). Withdrawn. FPN paid.	1
	Fiscal fine (£50)	5
	PF Warning Letter	8
	Diversion to social work	3
	Failed social work diversion, no further action	2
	No action	2
	Roll up	2
Directions by Local Authorities regs, reg 12(2)(b)	3	
	Summary complaint (Sheriff Court)	1
	PF Warning, challenged. Marked summary, no action in error	1
	PF Warning Letter	1
Directions by Local Authorities regs, reg 12(3)	12	
	Fiscal fine (£100)	1
	PF Warning Letter	2
	Diversion to social work	1
	Failed diversion, no further action	1
	Roll up	2
	No action	5
September 2020 regs, reg 15(1)	62	
	Summary complaint (Sheriff Court)	2
	Fiscal fine (£400)	3
	FF (£250) refused. Summary complaint (Sheriff Court)	2
	FF (£250) refused. Summary complaint (JP Court)	1
	Fiscal fine (£250)	1
	Fiscal fine (£175)	5
	Fiscal fine (£125) withdrawn, no further action	1
	Fiscal fine (£125)	9
	Fiscal fine (£100) withdrawn, no further action	2
	FF (£50) refused. Summary complaint (JP Court)	1
	Fiscal fine (£50)	11
	PF warning Letter	6
	Diversion to social work	2
	Failed social work diversion, no further action	2
	Reporter	3
	No action	7
	Rolled into another case (duplicate)	4
Additional Temporary Measures, regs 26(1)	5	
	Summary complaint (Sheriff Court)	2
	PF Warning Letter	1
	Roll up	1
	No action	1
Local Levels regulations, reg 5(1)	439	
	Summary complaint (Sheriff Court)	32
	Summary complaint (JP Court)	2
	Fiscal fine (£400)	2
	Fiscal fine (£325)	2
	Fiscal fine (£250)	2
	Fiscal fine (£175)	5
	Fiscal fine (£125) refused. Summary complaint (JP Court)	2
	Fiscal fine (£125)	51
	Fiscal fine (£100)	4
	Fiscal fine (£50)	137
	Fiscal fine (£50). Withdrawn/ refused. Summary complaint (JP Court)	2
	Fiscal fine (£50). Withdrawn/ refused. No further action	6
	Fiscal fine (£30)	3
	PF Warning Letter	56
	PF Warning. Challenged. Marked summary (JP), no action in error	1
	Diversion to social work	29

		Failed social work diversion, summary complaint (JP Court)	2
		Failed social work diversion, no further action	14
		Referred to Children's Reporter	10
		No action - alternative charge (culpable and reckless conduct) used	4
		No action	53
		Duplicate charge - no action	5
		Rolled into another case (duplicate)	15
Local Levels regulations, reg 5(2)	4		
		Fiscal fine (£125)	2
		Fiscal fine (£50)	1
		No action	1
Local Levels regulations, reg 5(3)	8		
		Summary complaint (Sheriff Court)	2
		Fiscal fine (£175 - together with other charge(s))	2
		Fiscal fine (£50)	2
		PF Warning Letter	1
		Roll up	1
International Travel regulations	26		
		Summary complaint (Sheriff Court)	4
		Fiscal fine (£500) refused. Summary complaint (Sheriff Court)	1
		Fiscal fine (£500) refused. Summary complaint (JP Court)	1
		Fiscal fine (£250) refused. Summary complaint (JP Court)	1
		Fiscal fine (£250)	1
		Fiscal fine (£175)	1
		Fiscal fine (£125)	3
		Fiscal fine (£50)	1
		PF Warning Letter	6
		No action - merged into another charge	2
		No action	5
International Travel regulations, reg 9(2)	3		
		Fiscal fine (£50)	2
		No action	1
International Travel regulations, reg 9(3)	1		
		No action	1
August 2021 regulations	4		
		Summary complaint	1
		No action	3

APPENDIX 6 – ALL CHARGES UNDER COVID-19 REGULATIONS
AND THE CORONAVIRUS ACT 2020

Charge	No.	Requirement contravened	No.	Circumstances	No.	Initial marking	No.	Detailed outcome	No.
March 2020 regulations									
Regulation 8(1)	820								
		Leave home without reasonable excuse (reg 5)	466						
				Being outside home while committing crime(s) of dishonesty	33				
					Court		27	Indicted, PG	1
								Indicted, NG plea accepted, PG to other charge(s)	9
								Summary complaint, PG	9
								Summary complaint, NG plea accepted, PG to other	7
								Summary complaint, discontinued	1
					No action		5	No action	5
					Duplicate		1	Rollled into another case	1
				Behaving suspiciously in public (no charge for prior behaviour)	14				
					Court		4	Indicted. NG plea accepted, PG to other charge(s)	1
								Summary complaint, NG plea accepted, PG to other charge(s)	3
					Direct measure		5	Fiscal fine (£175)	1
								Fiscal fine (£175 - together with other charge(s))	1
								Fiscal fine (£125)	2
								Fiscal fine (£50)	1
					No action		4	Merged with another charge	1
								No action	3
					Duplicate		1	Rollled into another case	1
				Driving under influence/failure to provide a sample	9				
					Court		8	Summary complaint. FG after trial	1
								Summary complaint, PG	2
								Summary complaint. NG accepted, PG to other charge(s)	4
								Petition. Reduced to summary complaint. NG accepted, PG to other charge(s)	1
					Duplicate		1	Duplicate charge - no action	1
				Committing other road traffic offences	16				
					Court		12	Summary complaint, PG	4
								Summary complaint, NG accepted, PG to other charge(s)	4
								Summary complaint (JP Court), PG	1
								Summary complaint (JP court), NG accepted, PG to other charge(s)	1
								Summary complaint, discontinued (plea agreement)	1
								Summary complaint (JP Court), discontinued (plea agreement)	1
					No action		4	No action	4
				Being outwith home address in breach of curfew (bail or undertaking) conditions - including 20+ hour curfews	23				
					Court		11	Indicted. NG plea accepted, PG to other charge(s)	2
								Summary complaint, PG	4
								Summary complaint, NG plea accepted, PG to another charge	2
								Summary complaint, discontinued	3
					No action		7	No action (insufficient evidence)	1
								No action	6
					Duplicate		3	Rollled into another case	3

				Other	2		
						No action? Record unclear	1
						Outcome not noted (researcher's error)	1
			Drinking in the street	25			
				Court	7		
						Indicted. NG plea accepted, PG to other charge(s)	2
						Summary complaint, NG plea accepted, PG to other charge(s)	4
						Summary complaint (JP court), discontinued (failed service)	1
				Direct measure	14		
						Fiscal fine (£250)	1
						Fiscal fine (£175 - together with other charges)	1
						Fiscal fine (£125)	4
						Fiscal fine (£50)	3
						Fiscal fine (£50 across this and other charge(s))	3
						Fiscal fine (£50). Refused. No further action	1
						PF Warning letter	1
				Diversion	1		
						Referred to the Children's Reporter	1
				No action	2		
						No action (further action disproportionate)	1
						No action	1
				Duplicate	1		
						Duplicate charge - no action	1
			Drunk and incapable alone in public	17			
				Court	7		
						Indicted. PG	1
						Summary complaint, PG	3
						Summary complaint, NG plea accepted, PG to other charge(s)	3
				Direct measure	4		
						Fiscal fine (£125) - refused. Summary complaint (JP court), discontinued	1
						Fiscal fine (£125)	1
						Fiscal fine (£175 - together with other charges)	1
						Fiscal fine (£50) issued and withdrawn	1
				Diversion	1		
						Failed social work diversion - no further action	1
				No action	2		
						No action (further action disproportionate)	1
						No action	1
				Duplicate	3		
						Rolled into another case	3
			In company of one other person at another address	13			
				Court	3		
						Summary complaint, PG	2
						Summary complaint, discontinued (witness engagement)	1
				Direct measure	8		
						Fiscal fine (£250 - together with other charge(s))	1
						Fiscal fine (£175)	1
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£125)	1
						Fiscal fine (£50)	4
				No action	1		
						No action (further action disproportionate)	1
				Duplicate	1		
						Rolled into another case	1
			Attend gathering (unspecified number) at another person's address	16			
				Court	8		
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint. Not Proven verdict after trial	1

							Summary complaint, discontinued (accused deceased)	2
							Summary complaint, discontinued (accused in prison)	2
							Petition, not indicted on this charge (PG by s76 indictment)	1
					Direct measure	7		
							Fiscal fine (£500)	1
							Fiscal fine (£325 - together with other charge(s))	1
							Fiscal fine (£175 - together with other charge(s))	1
							Fiscal fine (£125 - together with other charge(s))	1
							Fiscal fine (£50)	3
					No action	1		
							No action (age, good behaviour, no previous convictions)	1
				Attend gathering (3 to 5 people) at another person's address	16			
					Court	9		
							Summary complaint, PG	6
							Summary complaint, Found Guilty after trial	1
							Summary complaint, NG plea accepted, PG to other charge(s)	1
							Petition, not indicted on this charge	1
					Direct measure	3		
							Fiscal fine (£125)	3
					No action	4		
							No action (reporting delay)	1
							No action	3
				Attend gathering (6 to "around 30" people) at another person's address	10			
					Court	4		
							Indicted, PG	3
							Summary complaint, NG plea accepted, PG to other charge(s)	1
					Direct measure	4		
							Fiscal fine (£50)	4
					No action	2		
							No action	2
				Attend at another person's address to confront/menace/harass them	16			
					Court	16		
							Indicted. PG	1
							Indicted, NG plea accepted, PG to other charge(s)	1
							Petition, not indicted on this charge	4
							Summary complaint, PG	6
							Summary complaint, NG plea accepted, PG to other charge(s)	3
							Summary complaint, discontinued (accused deceased)	1
				Causing a disturbance or behaving in threatening manner on a residential street	13			
					Court	9		
							Indicted, NG plea accepted, PG to other charge(s)	3
							Indicted, discontinued (witness issues)	1
							Summary complaint, PG	2
							Summary complaint, NG plea accepted, PG to other charge(s)	2
							Summary complaint, discontinued	1
					Direct measure	1		
							Fiscal fine (£175 - total, along with other charges)	1
					Diversion	1		
							Referred to Children's Reporter	1
					Duplicate	2		
							Rolled into another case	2
				Domestic abuse: harassment/attending ex-partner's address to menace them/in breach of court order	10			
					Court	7		
							Indicted. NG plea accepted, PG to other charge(s)	2
							Summary complaint, PG	4

						Summary complaint, NG plea accepted, PG to other charge(s)	1
				No action	3		
				No action			3
			Domestic abuse offence while in company of partner/ex-partner	<8			
				Not reportable		n/a	
			Behaving in disorderly manner in public	21			
				Court	13		
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charges	9
						Marked for summary complaint, discontinued (accused deceased) before service	1
						Summary continued, discontinued	1
						Summary complaint, discontinued (public interest, age of offence)	1
				Direct measure	2		
						Fiscal fine (£250 - together with other charge)	1
						Fiscal fine (£125)	1
				No action	5		
						No action	5
				Duplicate	1		
						Rolled into another case	1
			Repeatedly seen by police outside of home address	26			
				Court	10		
						Indicted. NG plea accepted, PG to other charge(s)	1
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
						Petition. Reduced to summary complaint. NG plea accepted, PG to other charge(s)	1
						Summary complaint, discontinued (no longer in public interest, given backlog)	1
						Summary complaint, discontinued (plea agreement)	2
						Summary complaint, discontinued (rolled into petition).	1
				Direct measure	12		
						Fiscal fine (£250)	1
						Fiscal fine (£175)	1
						Fiscal fine (£175 - together with other charge)	2
						Fiscal fine (£50)	6
						PF Warning Letter	2
				Diversion	1		
						Diversion to social work	1
				No action	2		
						No action (further action disproportionate)	1
						No action (FPN issued)	1
				Duplicate	1		
						Rolled into another case	1
			Minor public nuisance: e.g. begging/approaching members of the public/filming them/taking drugs	12			
				Court	7		
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, discontinued (serving prison sentence)	1
						Summary complaint, discontinued (rolled into petition).	1
						Petition, not indicted on this charge (PG by s76 to other charge(s))	1
						Petition. Rolled into another case	1

				Direct measure	3		
						Fiscal fine (£175)	1
						Fiscal fine (£50)	1
						PF Warning Letter	1
				No action	1		
						No action - alternative charge (breach of the peace) used	1
				Duplicate	1		
						Rolled into another case	1
			In a vehicle with others while in possession of/taking drugs	16			
				Court	9		
						Summary complaint, PG	3
						Summary complaint, NG plea accepted, PG to other charge(s)	4
						Summary complaint, discontinued (failed service)	1
						Summary complaint (JP court), NG plea accepted, PG to other charge(s)	1
				Direct measure	3		
						Fiscal fine (£125)	3
				Diversions	2		
						Diversions to social work	2
				Duplicate	2		
						Rolled into another case	2
			Failing to self-isolate having tested positive/displaying symptoms	9			
				Court	6		
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charges	1
						Summary complaint, discontinued	2
						Summary complaint - outcome not noted (researcher error)	1
						Petition, not indicted on this charge (PG by s76 to other charges)	1
				No action	2		
						No action	1
						No action (accused serving prison sentence)	1
				Duplicate	1		
						Rolled into another case	1
			Vulnerable young adult leaving care home/children's unit (regular abscondee/missing person)	29			
				Court	4		
						Summary complaint, discontinued (accused unfit for trial)	1
						Summary complaint, discontinued (public interest, age of offence)	3
				Diversions	19		
						Referred to Children's Reporter	19
				Duplicate	6		
						Rolled into another case	6
			Non-essential travel: "unnecessary" distance from home address	22			
				Court	8		
						Indicted. NG plea accepted, PG to other charge(s)	1
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	3
						Summary complaint. Found Not Guilty after trial	1
						Summary complaint (JP court), discontinued	1
						Summary complaint, discontinued (witness issues)	1
				Direct measure	8		
						Fiscal fine (£175 - together with other charges)	1
						Fiscal fine (£125) (together with other charges)	1
						Fiscal fine (£125)	1
						Fiscal fine (£50)	2
						Fiscal fine (£50), later withdrawn (reasonable explanation)	2

						PF Warning letter	1
				No action	5		
						No action (further action disproportionate)	2
						No action (reporting delay)	1
						No action (no jurisdiction)	1
						No action	1
				Duplicate	1		
						Rolled into another case	1
			Gathering with another/others in public	<8			
				Not reportable		n/a	
			Travelling to "natural beauty spot"/scenic location	17			
				Court	2		
						Summary complaint, NG plea accepted, PG to other charges	1
						Summary complaint (JP court), discontinued	1
				Direct measure	14		
						Fiscal fine (£125)	4
						Fiscal fine (£50)	7
						Fiscal fine (£50) - refused. Summary complaint (JP Court), discontinued	1
						PF Warning Letter	2
				Duplicate	1		
						Duplicate charge - no action	1
			Leaving home for non-essential purpose - e.g. fishing, driving for leisure, unnecessary purchases, buying drugs	26			
				Court	7		
						Summary complaint, PG	4
						Summary complaint, NG plea accepted, PG to another charge	3
				Direct measure	12		
						Fiscal fine (£250)	1
						Fiscal fine (£125)	3
						Fiscal fine (£125) refused. Summary complaint (JP court), discontinued	1
						Fixed penalty (RT offences) (£100 - together with other charge(s))	1
						Fiscal fine (£50)	6
				Diversion	2		
						Failed social work diversion, no further action	2
				No action	3		
						No action (further action disproportionate)	1
						No action (permissible reason)	1
						No action	1
				Duplicate	2		
						Rolled into another case	2
			Outside of home while committing other serious crime - e.g. violence, in possession of weapons, drug supply	10			
				Court	6		
						Indicted. NG plea accepted, PG to other charge(s)	3
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Petition, no further action (accused deceased)	1
				No action	4		
						No action	4
			Staying in same public place for "unreasonable" length of time/entering public park	<8			
				Not reportable		n/a	
			Enter another person's home/outbuilding without their permission (not with intent to steal)	<8			
				Not reportable		n/a	
			Other	27			
				Court	14		
						Petition, not indicted on this charge	1
						Summary complaint, PG	2

						Summary complaint, NG plea accepted, PG to other charge(s)	8
						Summary complaint, discontinued (insufficient evidence)	1
						Summary complaint (JP Court), PG	1
						Summary complaint (JP court), discontinued (no longer in public interest)	1
				Direct measure	2		
						Fiscal fine (£250 - together with other charges)	1
						Fiscal fine (£175 - together with other charges)	1
				Diversion	1		
						Failed social work diversion. Summary complaint, NG plea accepted, PG to other charge(s)	1
				No action	8		
						No action (age of offence)	1
						No action (delay by police in reporting)	1
						No action (FPN paid)	1
						No action (age, no PCs, good behaviour)	1
						No action	4
				Duplicate	2		
						Duplicate charge - no action	1
						Rolled into another case	1
		Combination - reg 5 (leave home) and 6 (gathering of >2)	39				
			Part of a group in public in possession of a weapon/weapons	21			
				Court	14		
						Indicted, NG plea accepted, PG to other charge(s)	6
						Summary complaint, NG plea accepted, PG to other charge(s)	3
						Petition, not indicted on this charge	3
						Petition. Rolled into another case	2
				No action	3		
						No action (age of accused)	3
				Duplicate	4		
						Duplicate charge - no action	4
			Group travelling for non-essential purpose	8			
				Court	3		
						Summary complaint (JP court), PG	1
						Summary complaint (JP court), NG plea accepted, PG to another charge	1
						Summary complaint (JP court), NG plea accepted (co-accused PG)	1
				Direct measure	4		
						Fiscal fine (£50 - together with another charge(s))	1
						Fiscal fine (£50), withdrawn. No further action.	1
						Fiscal fine (£50)	2
				No action	1		
						No action (insufficient evidence)	1
			Other	10			
				Court	6		
						Summary complaint, PG	2
						Summary complaint, NG plea accepted, PG to other charge(s)	4
				Direct measure	2		
						Fiscal fine (£175 together with another charge(s))	1
						Fiscal fine (£50)	1
				No action	2		
						No action	2
		Gathering (more than 2 persons from different households) in public (reg 6)	34				
			In public drinking/taking drugs with others	12			
				Court	2		
						Summary complaint, PG	1
						Summary complaint (JP court), discontinued	1
				Direct measure	6		
						Fiscal fine (£400)	1

						Fiscal fine (£250)	1
						Fiscal fine (£50)	4
					No action	4	
						No action (merged with another charge)	1
						No action	3
			Other	22			
				Court	12		
						Indicted. Discontinued (not criminal)	2
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	4
						Summary complaint, discontinued	1
						Summary complaint, discontinued (other)	2
						Petition, not indicted on this charge	2
				Direct measure	6		
						Fiscal fine (£50)	1
						PF Warning letter	4
						PF Warning letter. Challenged. No further action.	1
				No action	3		
						No action	2
						No action (insufficient evidence)	1
				Duplicate	1		
						Duplicate - no action	1
		Cease carrying on a business (reg 3)	3				
			Other	3			
				Court	1		
						Summary complaint. Discontinued (premises since closed, licence relinquished)	1
				Direct measure	1		
						Fiscal fine (£250)	1
				Other	1		
						Outcome not noted (researcher's error)	1
		Cease carrying on a business (reg 4)	1				
			Other	1			
				Direct measure	1		
						Fiscal fine (£500)	1
		Fail to wear face covering in certain indoor premises (reg 6B)	1				
			Other	1			
				No action	1		
						No action (serving prison sentence for another case)	1
		Attend party (16 or more people) in private dwelling (reg 6ZA)	4				
			Other	4			
				Court	3		
						Summary complaint, NG plea accepted, PG to other charges	3
				No action	1		
						No action (reporting delay)	1
		Adult given direction to ensure that child complies with restriction (regulation 7(6))	2				
			Other	2			
				No action	2		
						No action	2
		Alleged contravention of Reg 8(3) - mistakenly specified as offence under 8(1)	27				
			Fail to comply with police direction to return home	24			
				Court	8		
						Indicted, charge withdrawn during trial (found Not Guilty)	1
						Indicted, NG plea accepted, PG to other charge(s)	1
						Petition, no further action	1
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, discontinued (view taken that should have been FF, not in public interest given the backlog)	1

						Summary complaint (JP court), discontinued. FF originally issued but refused.	1
					Direct measure	9	
						Fiscal fine (£175 with other charges)	1
						Fiscal fine (£125 - together wih other charge(s)	1
						Fiscal fine (£125)	2
						Fiscal fine (£50)	2
						Fiscal fine (amount not noted - researcher's error)	2
						PF Warning letter	1
					Diversion	1	
						Referred to Children's Reporter	1
					No action	4	
						No action - reporting delay/further action disproportionate	1
						No action	3
					Duplicate	2	
						Rolled into another case	2
				Other	3		
					Direct measure	3	
						Fiscal fine (£125)	2
		Did not contravene regulations in force at time	61			PF Warning letter	1
				Attend a gathering at another person's address (after regulation 5 revoked/less than 16 people present)	14		
					Court	6	
						Summary complaint, NG plea accepted, PG to other charges	5
						Summary complaint, NG plea accepted (co-accused PG)	1
					No action	1	
						No action	1
					Duplicate	7	
						Duplicate - no action	7
				Fail to maintain physical distancing (at least 2m)/other behaviour perceived as "risky"	12		
					Court	3	
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint (JP court), discontinued	1
					Direct measure	4	
						Fiscal fine (£250)	1
						Fiscal fine (£50)	3
					No action	3	
						No action (not criminal)	1
						No action	2
					Duplicate	2	
						Duplicate - no action	1
						Rolled into another case	1
				Hosting social gathering/party in private dwelling/allow one other person into address	25		
					Court	8	
						Summary complaint, PG	2
						Summary complaint, PG. Plea withdrawn, discontinued (not criminal)	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
						Summary complaint, discontinued (plea agreement across multiple cases)	1
						Petition, reduced to summary, NG plea accepted, PG to other charge(s)	1
					Direct measure	5	
						Fiscal fine (£325)	1
						Fiscal fine (£175)	1

						Fiscal fine (£50)	2
						PF Warning letter	1
					No action	6	
						No action - alternative charge (culpable and reckless conduct) used	3
						No action (reporting delay/not criminal)	1
						No action	2
					Duplicate	6	
						Rolled into another case	6
				In public with one other person from different household	9		
					Court	2	
						Summary complaint, PG	2
					Direct measure	2	
						Fiscal fine (£125)	1
						Fiscal fine (£50)	1
					No action	3	
						No action (reporting delay)	1
						No action (not a crime)	2
					Duplicate	2	
						Duplicate charge - no action	2
				Other	1		
					Diversions	1	
		Regulation(s) no longer in force	180			Referred to Children's Reporter	1
				Failing to self-isolate while claiming to have Covid /symptoms/claim tested positive	11		
					Court	7	
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	3
						Petition, not indicted on this charge	3
					No action	2	
						No action - alternative charge (s38 CILSA 2010) used	1
						No action on this charge	1
					Duplicate	2	
						Rolled into another case	2
				Failing to self-isolate on receipt of a positive test/while symptomatic/after close contact tested positive	11		
					Court	3	
						Summary complaint, PG	1
						Petition, no further action	2
					Direct measure	3	
						Fiscal fine (£125)	1
						Fiscal fine (£50)	2
					Diversions	3	
						Referred to Children's Reporter	3
					No action	2	
						No action	2
				Hosting a gathering (3 -5 people in total) - indoor gatherings in private dwellings prohibited	15		
					Court	5	
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
						Summary complaint, discontinued (wrong regulations)	1
					Direct measure	4	
						Fiscal fine (£125)	2
						PF Warning letter	2
					No action	5	
						No action	5
					Duplicate	1	
						Rolled into another case	1
				Hosting a party (6-10 people in total) - indoor gatherings in dwellings prohibited	12		

					Court	3		
							Summary complaint, PG	1
							Summary complaint, discontinued (remanded in custody for another case)	1
							Summary complaint, discontinued (time bar)	1
					Direct measure	7		
							Fiscal fine (£125)	5
							PF Warning letter	2
					No action	2		
							No action (social work diversion explored but not required)	1
							No action	1
					Host a party (16-20 people present) - indoor gatherings in dwellings prohibited	8		
					Court	1		
							Summary complaint, NG plea accepted, PG to other charge(s)	1
					Direct measure	6		
							PF Warning Letter	6
					Duplicate	1		
							Rolled into another case	1
					Host a gathering/party in dwelling (unspecified number present) - indoor gatherings in dwellings prohibited	8		
					Court	3		
							Summary complaint, NG plea accepted, PG to other charge(s)	1
							Summary complaint (JP Court), PG	2
					Direct measure	2		
							Fiscal fine (£50)	1
							PF Warning Letter	1
					No action	3		
							No action	3
					Leave or remain outside of home address	17		
					Court	4		
							Summary complaint, PG	1
							Summary complaint, NG plea accepted, PG to other charges	3
					Direct measure	4		
							Fiscal fine (£125)	1
							Fiscal fine (£50)	1
							Fiscal fine (£50 - together with other charge(s))	1
							PF Warning letter	1
					Diversion	1		
							Referred to Children's Reporter	1
					No action	8		
							No action - further action disproportionate	1
							No action - alternative charge (s38 CILSA 2010) used	1
							No action	6
					Attend gathering in indoor/outdoor public place	11		
					Court	3		
							Summary complaint, NG plea accepted, PG to other charge(s)	2
							Summary complaint, discontinued (wrong regulations)	1
					Direct measure	4		
							Fiscal fine (£500)	1
							Fiscal fine (£125)	1
							Fiscal fine (£125 - together with other charge(s))	1
							Fiscal fine (£50)	1
					No action	2		
							No action	2
					Duplicate	2		
							Duplicate charge - no action	2
					Enter or leave level 3 or 4 area /enter Scotland	22		

					Court	3		
							Summary complaint, PG	1
							Summary complaint, NG plea accepted, PG to other charge(s)	1
							Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
					Direct measure	7		
							Fiscal fine (£250)	1
							Fiscal fine (£175- together with other charge(s))	2
							Fiscal fine (£125)	2
							Fiscal fine (£50 - together with other charge(s))	1
							PF Warning letter	1
					No action	10		
							No action - time-barred on receipt	2
							No action - insufficient evidence	1
							No action	7
					Duplicate	2		
							Rolled into another case	2
				Attend indoor gathering at dwelling (prohibited under level 3/4 restrictions)	39			
					Court	9		
							Summary complaint, NG plea accepted, PG to other charges	4
							Summary complaint, discontinued (wrong regulations)	3
							Petition, reduced to summary. NG plea accepted, PG to other charge(s)	2
					Direct measure	13		
							Fiscal fine (£175). Refused. Summary complaint, JP court, PG	1
							Fiscal fine (£250 - together with other charge(s))	1
							Fiscal fine (£175- together with other charge(s))	2
							Fiscal fine (£175).	1
							Fiscal fine (£125)	3
							Fiscal fine (£125). Withdrawn (accused untraced)	1
							Fiscal fine (£50)	4
					Diversion	2		
							Referred to Children's Reporter	2
					No action	11		
							No action (age of offence/reporting delay)	1
							No action (accused deceased)	1
							No action	9
					Duplicate	4		
							Duplicate - no action	2
							Rolled into another case	2
				Other	26			
					Court	5		
							Summary complaint, NG plea accepted, PG to other charge(s)	3
							Summary complaint, discontinued	1
							Petition, not indicted on this charge	1
					Direct measure	4		
							Fiscal fine (£175- together with other charge(s))	1
							Fiscal fine (£125 - together with other charge)	1
							Fiscal fine (£50)	2
					Diversion	1		
							Diversion to social work	1
					No action	15		
							No action - alternative charge (culpable and reckless conduct) used	5
							No action - reporting delay	2
							No action	8
					Duplicate	1		
							Rolled into another case	1
				NOT KNOWN - SENSITIVE CASE	1			
				Sensitive case - circumstances not known	1			

				Not known	1		
						Outcome not known	1
		INACCESSIBLE	1				
			Case not accessible	1			
				Not known	1		
						Outcome not known	1
Regulation 8(2)	16	Obstruct person carrying out a function under regulations	15				
			Resist police attempts to disperse party at gathering/delay or refuse to allow access for that purpose	13			
				Court	9		
						Indicted. NG plea accepted, PG to other charges	1
						Summary complaint, PG	4
						Summary complaint, NG plea accepted, PG to other charges	3
						Summary complaint, discontinued (plea agreement)	1
				Direct measure	2		
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£50)	1
				No action	2		
						No action	2
			Other	2			
				Court	1		
						Summary complaint, NG plea accepted, PG to other charges	1
				Diversion	1		
						Failed diversion. Summary complaint, PG	1
		Regulations no longer in force	1				
			Refuse to allow police access to disperse a party	1			
				Court	1		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
Regulation 8(3)	76	Fail to comply with reasonable instruction/direction/prohibition notice	32				
			Fail to comply with police direction to return home - while in public (enforcement of reg 5)	15			
				Court	8		
						Indicted, discontinued (witness issues)	1
						Summary complaint, NG plea accepted, PG to other charge(s)	5
						Summary complaint, discontinued (serving a prison sentence)	1
						Petition, not indicted on this charge	1
				Direct measure	5		
						Fiscal fine (£175)	1
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50 across this and reg 8(1) offence)	1
						Fiscal fine (£50). Accused untraced. Withdrawn.	1
						No action - further action disproportionate	1
				Duplicate	2		
						Rolled into another case	2
			Fail to comply with police direction to return home - gathering in dwelling	12			
				Court	8		
						Indicted, NG plea accepted, PG to other charge(s)	1
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	4
						Summary complaint, found Not Guilty after trial	1
						Summary complaint, discontinued (accused deceased)	1
				Direct measure	2		
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£50 - together with other charge(s))	1
				No action	2		
						No action	2

			Other	5			
				Court	2		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint (JP Court). Crown motion to adjourn refused. Deserted simpliciter	1
				Direct measure	1		
						Fiscal fine (£175 - total, along with other charges)	1
				No action	2		
		Alleged contravention of regulation 8(1) - mistakenly labelled as reg 8(3)	37			No action	2
			Leave home without reasonable excuse	27			
				Court	6		
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	3
						Summary complaint, discontinued (failed service)	1
						Summary complaint, discontinued	1
				Direct measure	4		
						Fiscal fine (£175)	1
						Fiscal fine (£50)	2
						Fiscal fine (£50). Withdrawn (deportation proceedings)	1
				Diversion	3		
						Referred to Children's Reporter	3
				No action	13		
						No action	13
				Duplicate	1		
						Rolled into another case	1
			Other	10			
				Court	4		
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Petition, not indicted on this charge (insufficient evidence)	2
				Diversion	1		
						Referred to Children's Reporter	1
				No action	4		
						No action	4
				Duplicate	1		
						Duplicate charge - no action	1
		Alleged contravention of regulation 8(2) - mistakenly labelled as reg 8(3)	1				
			Other	1			
				No action	1		
						No action	1
		Not criminal under regulations in force at time	3				
			Other	3			
				Direct measure	2		
						PF Warning Letter	2
				No action	1		
						No action	1
		Regulation(s) no longer in force	4				
			Other	4			
				Court	1		
						Summary complaint. PG	1
				No action	3		
						No action	3
Aberdeen City regulations							
Regulation 7(1)	1						
		Incorrect charge used - should have been r5(1), Local Levels regulations	1				
			Other	1			
				Direct measure	1		
Directions by Local Authorities. regs							
Regulation 12(1)	122					Fiscal fine (£250)	1

	Incorrect charge used - should have been r8(1), March 2020 regulations	1					
		Other	1				
			Court	1			
					Summary complaint, discontinued		1
	Incorrect charge used- should have been r26(1), Additional Temporary Measures regs	3					
		Other	3				
			Court	3			
					Summary complaint, discontinued. Petition. Rolled into another case		1
					Summary complaint, NG plea accepted, PG to other charge(s)		1
					Petition, no further action (not indicted on this charge)		1
	Incorrect charge used - should have been r5(1), Local Levels regs	114					
		Attend gathering at private dwelling - indoor gatherings at dwellings prohibited	20				
			Court	5			
					Indicted. NG plea accepted, PG to other charge(s)		1
					Summary complaint, NG plea accepted, PG to other charge(s)		4
			Direct measure	12			
					Fiscal fine (£175 - together with other charge(s))		1
					Fiscal fine (£125 - together with other charge(s))		1
					Fiscal fine (£50)		6
					PF Warning Letter		4
			No action	3			
					No action		3
		Travel restrictions: leave or enter level 3/4 area, or enter Scotland	25				
			Court	12			
					Summary complaint, PG		1
					Summary complaint, NG plea accepted, PG to other charge(s)		7
					Summary complaint, discontinued		2
					Summary complaint (JP Court), NG plea accepted, PG to other charge(s)		1
					Summary complaint (JP Court), discontinued (delay in executing warrant)		1
			Direct measure	2			
					Fiscal fine (£50)		1
					Fiscal fine (£50 - together with other charge(s))		1
			Diversion	1			
					Referred to Children's Reporter		1
			No action	5			
					No action (time bar)		1
					No action		4
			Duplicate	5			
					Rolled into another case		5
		Leave or remain outside of home address	11				
			Court	4			
					Summary complaint, NG plea accepted, PG to other charge(s)		3
					Summary complaint, discontinued		1
			Direct measure	2			
					Work Offer (30 hours) - together with other charge(s)		1
					Fiscal fine (£50)		1
			No action	4			
					No action - alternative charge (correct regulations) used		1
					No action		3
			Duplicate	1			
					Rolled into another case		1
		Attend gathering in outdoor public place	10				
			Court	9			
					Summary complaint, NG plea accepted, PG to other charge(s)		2

						Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
						Summary complaint, discontinued	6
				Duplicate	1		
						No action	1
			Meet indoors for criminal purpose (dealing drugs) - indoor gatherings prohibited	10			
				No action	6		
						No action	6
				Duplicate	4		
						Duplicate	2
						Rolled into another case	2
			Host indoor social gathering/party at private dwelling (3 or more people present)	19			
				Court	4		
						Indicted. NG plea accepted, PG to other charge(s)	2
						Indicted. NG plea accepted.	1
						Summary complaint, PG	1
				Direct measure	9		
						Fiscal fine (£250 - together with other charge(s))	1
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£125)	1
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£100). Withdrawn. FPN paid.	1
						Fiscal fine (£50 - together with other charge(s))	1
						Fiscal fine (£50)	2
						PF Warning Letter	1
				Diversion	2		
						Diversion to social work	1
						Marked for diversion. Mistakenly not actioned. No action.	1
				No action	3		
						No action - alternative charge (correct regulations) used	1
						No action	2
				Duplicate	1		
						Rolled into another case	1
			Other	19			
				Court	1		
				Direct measure	4	Summary complaint, NG plea accepted, PG to other charge(s)	1
						Fiscal fine (£175)	1
						Fiscal fine (£125)	1
						PF Warning Letter	2
				Diversion	5		
						Diversion to social work	2
						Failed social work diversion. No further action	2
						Referred to Children's Reporter	1
				No action	9		
						No action (insufficient evidence)	1
						No action	8
		Did not contravene regulations in force at time	4				
			Other	4			
				Court	1		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
				Direct measure	1		
						PF Warning Letter	1
				No action	2		
						No action	2
Regulation 12(2)(a)	3						
		Incorrect charge - should have been r5(1), Local Levels regulations	2				
			Other	2			
				Court	1		
						Summary complaint, PG	1
				No action	1		

						No action (reporting delay)	1
		Incorrect charge - should have been r5(2), Local Levels regulations	1				
		Other		1			
				Direct measure	1		
Regulation 12(2)(b)	7						
		Incorrect charge - should have been r8(1), March 2020 regulations	1			PF Warning Letter	1
		Other		1			
				Direct measure	1		
						PF Warning. Challenged. Marked summary complaint. No action in error.	1
		Incorrect charge - should be r5(1), Local Levels regulations	6				
		Other		6			
				Court	1		
						Summary complaint, discontinued (insufficient evidence)	1
				Direct measure	1		
						PF Warning letter	1
				No action	4		
						No action	4
Regulation 12(3)	46						
		Other	1				
		Other		1			
				No action	1		
		Incorrect charge - should have been reg15(1) or (3), September 2020 regulations	2			No action	1
		Other		2			
				Court	1		
						Summary complaint, NG plea accepted, PG to other charges	1
				No action	1		
						No action (time bar)	1
		Incorrect charge used - should have been r26(1), Additional Temporary Measures regs	3				
		Other		3			
				Court	2		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, discontinued (wrong charge)	1
				Duplicate	1		
						Rolled into another case	1
		Incorrect charge - should have been reg 5(1), Local Levels regulations	28				
		Host/attend social gathering indoors at private dwelling - indoor gatherings prohibited		15			
				Direct measure	2		
						PF Warning Letter	2
				Diversification	2		
						Diversification to social work	1
						Referred to Children's Reporter	1
				No action	5		
						No action (correct charge added)	1
						No action	3
						No action (further action disproportionate)	1
				Duplicate/other	6		
						Rolled into another case, changed to correct charge	1
						Rolled into another case, charges merged	5
		Restrictions on movement - leave home/enter Scotland/enter level 4 area	9				
				Court	3		
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Petition, not indicted on this charge (PG to other charge(s) s76)	1
				Direct measure	1		

							PF Warning Letter	1
					Diversion	1		
							Diversion to social work	1
					No action	4		
							No action	1
							No action (timebarred on receipt)	3
				Other	4			
					Court	1		
							Summary complaint. PG	1
					No action	3		
							No action (further action disproportionate)	1
							No action	2
		Incorrect charge used - should have been regulation 5(3), Local Levels regulations	9					
			Other	9				
				Court	2			
							Summary complaint, NG plea accepted, PG to other charge(s)	1
							Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
					Direct measure	3		
							Fiscal fine (£100)	1
							PF Warning letter	2
					Diversion	4		
							Diversion to social work	3
							Failed social work diversion. No further action (serving prison sentence)	1
		Did not contravene regulations in force at time	3					
			Other	3				
				No action	3			
							No action (further action disproportionate)	1
							No action (not a crime)	1
							No action	1
September 2020 regs								
Reg 15(1)								
	93	Curfew for cafes, bars, restaurants (regulation 6A)	1					
			Other	1				
				Direct measure	1			
							Fiscal fine (£50)	1
		Gather in public place (max 6 from 2) (regulation 8)	1					
			Other	1				
				Direct measure	1			
							Fiscal fine (£50)	1
		Gather in dwelling (max 6 from 2 households, then indoor gatherings prohibited) (reg 9)	24					
			Attend social gathering (of at least 3 people) indoors at dwelling	14				
				Court	1			
							Summary complaint, discontinued (not criminal)	1
				Direct measure	5			
							Fiscal fine (£125)	1
							PF Warning Letter	4
				No action	8			
							No action - alternative charge (culpable and reckless conduct) used	4
							No action	4
			Host social gathering (3 to "around 30" people present) indoors at dwelling	9				
				Court	4			
							Summary complaint, NG plea accepted, PG to other charge(s)	4
				Direct measure	4			
							Fiscal fine (£175)	1
							Fiscal fine (£175 - together with other charge(s))	1
							PF Warning Letter	2
				No action	1			

					No action - alternative charge (culpable and reckless conduct) used	1
		Other	1			
				No action	1	
					No action	1
		Alleged contravention of reg 15(2) - mistakenly libelled as reg 15(1)	2			
		Other	2			
				Court	2	
					Summary complaint, NG plea accepted, PG to other charge(s)	1
					Summary complaint, NG plea accepted (co-accused PG)	1
		Regulations no longer in force	61			
		Restrictions on movement: enter level 4 area/enter Scotland/leave or remain outwith home address	14			
				Court	5	
					Indicted. PG	1
					Summary complaint, PG	1
					Summary complaint, NG plea accepted, PG to other charge(s)	3
				Direct measure	1	
					Fiscal fine (£50). Refused. No action.	1
				Diversion	3	
					Referred to Children's Reporter	3
				No action	5	
					No action (further action disproportionate)	1
					No action	4
		Host/attend gathering indoors (3 or more present) at dwelling - indoor gatherings in dwellings prohibited	27			
				Court	7	
					Summary complaint, NG plea accepted, PG to other charge(s)	5
					Summary complaint, "dismissed" (not clear if withdrawn or submission upheld)	1
					Summary complaint (JP Court), discontinued (failed service)	1
				Direct measure	6	
					Fiscal fine (£400 - together with other charge(s))	2
					Fiscal fine (£175 - together with other charge(s))	1
					Fiscal fine (£100). Withdrawn (already accepted FPN)	2
					PF Warning Letter	1
				Diversion	3	
					Diversion to social work	3
				No action	11	
					No action - alternative charge (correct regulations) used	9
					No action (charge under correct regulations added)	1
					No action (insufficient evidence)	1
		Allow one other person into home address/gathering with one other person at their home address	10			
				Direct measure	5	
					Fiscal fine (£400 - together with other charge(s))	1
					Fiscal fine (£175)	2
					PF Warning Letter	2
				Diversion	2	
					Referred to Children's Reporter	2
				No action	1	
					No action	1
				Duplicate	2	
					Rolled into another case	2
		Other	10			
				Court	1	
					Summary complaint, NG plea accepted, PG to other charge(s)	1

					Direct measure	2		
							Fiscal fine (£175)	1
							PF Warning Letter	1
					Diversion	1		
							Diversion to social work	1
					No action	5		
							No action (insufficient evidence)	1
							No action (insufficient evidence on more serious charge(s))	2
							No action	2
					Duplicate	1		
							Duplicate charge - no action	1
		Did not contravene regulations in force at time	3					
			Other	3				
					Direct measure	1		
							Fiscal fine (£50)	1
					Diversion	2		
							Failed diversion. No further action (delay since diverted)	1
							Referred to Children's Reporter	1
		NOT KNOWN - SENSITIVE CASE	1 Not known	1				
					Not known	1		
Reg 15(3)	7	Fail to comply with direction/instruction/prohibition notice	3				Not known	1
			Other	3				
					Court	2		
							Summary complaint, NG plea accepted, PG to other charge(s)	1
							Summary complaint (JP Court), NG plea accepted, PG to other charge(s)	1
					No action	1		
							No action	1
		Alleged contravention of reg 15(1) - mistakenly labelled as reg 15(3)	1					
			Other	1				
					Direct measure	1		
							PF Warning	1
		Incorrect charge used - should have been r26(3), Additional Temporary Measures regs	1					
			Other	1				
					Court	1		
							Summary complaint, PG	1
		Incorrect charge used - should have been r5(1), Local Levels regulations	1					
			Other	1				
					Court	1	Summary complaint, NG plea accepted, PG to other charge(s)	1
		Did not contravene regulations in force at time	1					
			Other	1				
					No action	1		
							No action	1
Additional Temporary Measures								
Reg 26(1)	158	Public indoor gathering (protected area) exceeding max (reg 11)	1					
			Other	1				
		Curfew on licensed premises/supply alcohol indoors (outside protected area) (regs 12-14)	4					
					Diversion	1		
			Other	4			Diversion to social work	1
					Court	2		
							Summary complaint, discontinued (wrong requirement specified)	1
							Summary complaint, discontinued	1
					No action	2		
							No action (age of offence)	1
							No action - alternative charge (culpable and reckless conduct) used	1

	Attend gathering in dwelling - reg 20 (indoor gatherings in dwellings prohibited)	48	Attend gathering/party indoors (no not specified) - indoor gathering in private dwellings prohibited	27			
				Court	6		
						Summary complaint, NG plea accepted, PG to other charge(s)	3
						Summary complaint, NG plea accepted (co-accused PG)	2
						Summary complaint (JP Court), PG	1
				Direct measure	21		
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£125)	5
						Fiscal fine (£50)	11
						PF Warning Letter	4
			Host gathering/party at dwelling/allow another person into your address	21			
				Court	3		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint (JP Court), discontinued (age of offence)	2
				Direct measure	13		
						Fiscal fine (£250), not paid. Summary complaint (JP Court). Discontinued (failed service)	1
						Fiscal fine (£50). Refused. Summary complaint (JP Court). Discontinued (not in public interest)	1
						Fiscal fine (£250)	1
						Fiscal fine (£175)	1
						Fiscal fine (£125)	3
						Fiscal fine (£125 - together with other charge(s). Untraced. Summary complaint (JP Court). Discontinued (failed service)	1
						Fiscal fine (£50)	2
						PF Warning Letter	3
				No action	4		
						No action (imminent time bar, further action disproportionate)	1
						No action (insufficient evidence on more serious charge(s))	1
						No action	2
				Duplicate	1		
						Rolled into another case	1
	NOT KNOWN - SENSITIVE CASE	33	Not known	33	Not known	33	
						Not known	33
	Incorrect charge used - should have been r26(3)	1	Other	1			
	Incorrect charge used - should have been r9, International Travel regulations	1		No action	1		
			Other	1		No action	1
				Direct measure	1		
						PF Warning Letter	1
	Regulations no longer in force - should have been reg 5(1), Local Levels regulations	65	Leave or remain outwith home address	10			
				Court	3		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
						Summary complaint, then re-marked for diversion. Mistakenly not actioned. No further action	1
				No action	5		
						No action - alternative charge (correct regulations) used	1
						No action (further action disproportionate)	1
						No action	3

				Duplicate	2		
						Rolled into another case	2
			Leave level 4/enter level 3 area	14			
				Court	6		
						Summary complaint. PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
						Summary complaint, discontinued (wrong regulations)	1
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, discontinued	1
				Direct measure	2		
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£125)	1
				Diversions	1		
						Failed social work diversion. No further action	1
				No action	4		
						No action (further action disproportionate)	1
						No action	3
				Duplicate	1		
						Rolled into another case	1
			Attend gathering at dwelling (level 3/4 restrictions) - indoor gatherings in dwellings prohibited	22			
				Court	5		
						Summary complaint. PG	2
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
				Direct measure	5		
						Fiscal fine (£250 - together with other charge(s))	1
						Fiscal fine (£125)	2
						Fiscal fine (£50)	2
				Diversions	1		
						Diversion to social work	1
				No action	10		
						No action (reporting delay)	3
						No action (insufficient evidence on more serious charge)	3
						No action	4
				Duplicate	1		
						Rolled into another case	1
			Host gathering/allow another person into dwelling (level 2-4 restrictions) - indoor gatherings in dwellings prohibited	10			
				Court	2		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, discontinued (accused health)	1
				Direct measure	6		
						Fiscal fine (£250)	1
						Fiscal fine (£125)	2
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50)	2
				No action	1		
						No action	1
				Duplicate	1		
						Rolled into another case	1
			Other	9			
				Court	5		
						Summary complaint. PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, charge withdrawn at trial (found Not Guilty)	1

						Summary complaint, discontinued (insufficient evidence)	1
					Direct measure	2	
						FF (£250). Refused. Summary complaint (JP), discontinued (acceptable explanation offered)	1
						Fiscal fine (£175)	1
					No action	2	
						No action (reporting delay)	1
						No action	1
		Did not contravene regulations in force at time	5				
			Other	5			
					Court	2	
						Petition. PG by s76 indictment	1
						Summary complaint. PG	1
					No action	3	
						No action (further action disproportionate)	1
						No action	2
Reg 26(2)	1						
		Obstruct person carrying out a function under regulations	1				
			Other	1			
					No action	1	
						No action	1
Reg 26(3)	1						
		Incorrect charge - should have been Local Levels regulations, r5(1)	1				
			Other	1			
The Local Levels regulations					Court	1	
Reg 5(1)	1121					Summary complaint. Discontinued (difficulty in establishing jurisdiction)	1
		Fail to wear face covering on public transport	3				
			Other	3			
					Court	3	
						Summary complaint, PG	2
						Summary complaint, NG plea accepted, PG to other charge(s)	1
		Fail to wear face covering in certain indoor places - hospitality/supermarkets/etc	9				
			Other	9			
					Court	5	
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint (JP Court), PG.	1
						Summary complaint (JP Court), withdrawn at trial (FNG)	1
					Direct measure	2	
						Fiscal fine (£50)	1
						PF Warning Letter	1
					No action	2	
						No action	2
		Fail to close licensed premises selling alcohol only	4				
			Other	4			
					Court	2	
						Summary complaint, discontinued (age of offence, witnesses not available)	1
						Summary complaint, discontinued	1
					Direct measure	2	
						Fiscal fine (£100)	1
						Fiscal fine (£50)	1
		Restrictions on licensed premises	10				
			Other	10			
					Court	2	
						Summary complaint, discontinued (no longer in public interest)	1
						Summary complaint, discontinued (acceptable explanation offered)	1
					Direct measure	4	
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50)	2

						PF Warning Letter	1
					No action	4	
						No action (insufficient evidence that accused acting in relevant capacity)	4
		Fail to close close-contact service	1				
			Other	1			
				No action	1		
						No action (insufficient evidence)	1
		Leave home (level 4)	78				
			Gathering in indoor/outdoor public place	11			
				Court	4		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, charge withdrawn at trial (found Not Guilty)	2
						Summary complaint, discontinued (insufficient evidence - accused homeless)	1
				Direct measure	7		
						Fiscal fine (£250 - together with other charge(s))	2
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£125)	4
			Driving under the influence /committing other road traffic offence(s)	12			
				Court	7		
						Summary complaint, NG plea accepted, PG to other charge(s)	6
						Summary complaint, discontinued (accused serving prison sentence)	1
				Direct measure	1		
						PF Warning Letter	1
				No action	2		
						No action	2
				Duplicate	2		
						Rolled into another case	2
			Public disorder/public nuisance (including drunkenness and drug possession)	13			
				Court	8		
						Summary complaint, FG after trial	1
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	6
				Direct measure	3		
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£50)	1
						PF Warning Letter	1
				No action	1		
						No action	1
				Duplicate	1		
						Rolled into another case	1
			Committing other offences - e.g. domestic abuse/possession of a knife/crime(s) of dishonesty/dealing drugs	12			
				Court	11		
						Summary complaint, FG after trial.	2
						Summary complaint, PG	2
						Summary complaint, NG plea accepted, PG to other charge(s)	6
						Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
				No action	1		
						No action	1
			Non-essential or unknown reason - e.g. gathering in dwelling, fishing, exploring abandoned buildings	16			
				Court	6		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, discontinued (PG to other, similar offences)	1
						Summary complaint (JP court), NG plea accepted, PG to other charge(s)	1

						Summary complaint (JP Court). CMA refused. Deserted simpliciter	1
						Petition, not indicted on this charge	2
					Direct measure	8	
						Fiscal fine (£125)	3
						Fiscal fine (£175)	1
						Fiscal fine (£50)	3
						Fiscal fine (£50). Accused untraced, withdrawn. No further action	1
					No action	1	
						No action (further action disproportionate)	1
					Duplicate	1	
						Duplicate - no action	1
			Other	14			
				Court	5		
						Summary complaint, Found Guilty after trial. Granted absolute discharge (no conviction)	1
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, not criminally responsible by reason of mental disorder	2
						Summary complaint (JP court), NG plea accepted, PG to other charge(s)	1
						Summary complaint (JP Court), Found Not Guilty after trial	1
					Diversion	1	
						Referred to Children's Reporter	1
					No action	5	
						No action (insufficient evidence)	2
						No action - alternative charge (culpable and reckless conduct) used	1
						No action (insufficient evidence on another charge)	1
						No action (not a crime)	1
					Duplicate	2	
						Rolled into another case	2
		Enter or leave Scotland - schedule 7A	42				
			Enter Scotland - social/family gathering during festive period	14			
				Direct measure	4		
					Fiscal fine (£50)	4	
				No action	7		
					No action (insufficient evidence)	6	
					No action (accused deceased)	1	
				Duplicate	3		
					Duplicate - no action	3	
			Non-essential reason - e.g. walking holiday, claim to be visiting friend/family member/buying a car	13			
				Court	6		
						Summary complaint, discontinued (failed service)	1
						Summary complaint (JP Court), discontinued (failed service)	2
						Summary complaint (JP Court), discontinued. PF Warning Letters issued.	3
				Direct measure	5		
					Fiscal fine (£100)	1	
					Fiscal fine (£50)	4	
				No action	2		
					No action (insufficient evidence)	1	
					No action	1	
			Enter Scotland - other criminality - crimes of dishonesty, concerned in the supply of drugs, possession of a knife	10			
				Court	8		
						Indicted. NG plea accepted, PG to other charge(s)	1
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, charge withdrawn at trial (FNG)	1
						Summary complaint, discontinued (co-accused PG)	1
						Petition, not indicted on this charge	4
				No action	2		

						No action	2
			Other	5			
				Court	2		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, discontinued (further action disproportionate)	1
				Direct measure	2		
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50 - together with other charge(s))	1
				No action	1		
						No action	1
		Enter or leave level 3 or 4 area	144				
			Enter/leave level 4 area - participate in gathering in indoor/outdoor public place	10			
				Court	4		
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, discontinued (age of offence, witnesses not available)	1
				Direct measure	3		
						Fiscal fine (£50)	3
				Diversion	1		
						Diversion to social work	1
				No action	2		
						No action	2
			Attend another person's address uninvited to harass/confront them (including domestic abuse in breach of bail)	11			
				Court	8		
						Summary complaint, PG	4
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, NG plea accepted	1
						Summary complaint, discontinued (insufficient evidence)	1
						Summary complaint, discontinued	1
				Direct measure	1		
						Fiscal fine (£125)	1
				No action	1		
						No action	1
				Duplicate	1		
						Rolled into another case	1
			Non-essential or unknown reason - e.g. driving for leisure, to "natural beauty spot", driving another person to social gathering	48			
				Court	17		
						Summary complaint, PG	6
						Summary complaint, NG plea accepted, PG to other charge(s)	5
						Summary complaint, discontinued (serving prison sentence)	1
						Summary complaint, discontinued (accused deceased)	1
						Summary complaint, discontinued (insufficient evidence)	2
						Summary complaint (JP Court), PG	2
				Direct measure	12		
						Fiscal fine (£250 - together with other charge(s))	1
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50)	7
						PF Warning Letter. Challenged. Marked for summary complaint (JP), but not actioned	1
						PF Warning Letter	1
				No action	7		
						No action - alternative charge (culpable and reckless conduct) used	1
						No action (further action disproportionate)	1
						No action	5

				Duplicate	12		
						Duplicate - no action	2
						Rollled into another case	10
			Public disorder/nuisance (including drunkenness)	14			
				Court	6		
						Summary complaint, NG plea accepted, PG to other charge(s)	6
				Direct measure	7		
						PF Work Offer (40 hours)	1
						Fiscal fine (£125)	3
						Fiscal fine (£125 - together with other charge(s))	2
						PF Warning Letter	1
				No action	1		
			Drink driving /other road traffic offence(s)	18		No action	1
				Court	15		
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	5
						Summary complaint, discontinued (complaint not signed)	1
						Summary complaint (JP Court), PG	5
						Summary complaint (JP Court), discontinued (failed service)	3
				Direct measure	1		
						Fiscal fine (£50)	1
				No action	1		
						No action	1
				Duplicate	1		
			In public place in possession of drugs	13		Duplicate - no action	1
				Court	2		
						Summary complaint (JP Court), PG	1
						Summary complaint (JP Court), NG plea accepted, PG to other charge(s)	1
				Direct measure	9		
						Fiscal fine (£325 - together with other charge(s))	1
						Fiscal fine (£175 - together with other charge(s))	3
						Fiscal fine (£125 - together with other charge(s))	3
						Fiscal fine (£50 - together with other charge(s))	1
						PF Warning Letter	1
				No action	2		
			Other criminality - e.g. crime(s) of dishonesty, supply of drugs, possession of a knife, sexual offences	19		No action (further action disproportionate)	2
				Court	14		
						Indicted. PG	1
						Indicted. NG plea accepted, PG to other charges	4
						Summary complaint, PG	2
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint. PG. PG withdrawn (issue with charge), deserted simpliciter	1
						Summary complaint, discontinued (mitigating circumstances)	1
						Summary complaint, discontinued (issues with drafting of main charge)	1
						Summary complaint (JP Court), PG	1
						Summary complaint (JP Court), NG plea accepted, PG to other charge(s)	1
						Summary complaint (JP Court), discontinued (delay in execution of warrant)	1
				Direct measure	1		
						Fiscal fine (£50). Refused. No further action	1
				No action	2		
						No action	2
				Duplicate	2		
						Duplicate - no action	2

			Other	11			
					Court	8	
						Summary complaint, PG	2
						Summary complaint, NG plea accepted, PG to other charge(s)	3
						Summary complaint, discontinued (evidential issues with main charge)	2
						Summary complaint, discontinued (time barred)	1
					Direct measure	1	
						PF Warning Letter	1
					Diversion	2	
						Referred to Children's Reporter	2
		Participate in public outdoor gathering (level 4)	40				
			Social gathering (group of 8 or less) - including travelling for recreation	20			
					Direct measure	9	
						Fiscal fine (£250)	1
						Fiscal fine (£125)	6
						FF (£125), challenged. Summary complaint (JP), discontinued (failed service)	2
					Diversion	9	
						Failed social work diversion. Summary complaint, NG plea accepted, PG to other charge(s)	1
						Failed social work diversion, no further action	2
						Diversion to social work	6
					No action	2	
						No action (not criminal)	2
			Social gathering (group of 15 or more/described as "large group")	<8			
					Not reportable	n/a	
			Participate in a protest	<8			
					Not reportable	n/a	
			Other	6			
					Court	6	
						Summary complaint, PG	2
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, discontinued (co-accused PG)	1
						Summary complaint, discontinued (insufficient evidence)	1
		Restriction on indoor public gatherings (level 4)	15				
			Other	15			
					Court	1	
						Summary complaint (JP Court), PG	1
					Direct measure	9	
						FF (£250). Refused. Summary complaint (JP), discontinued (acceptable explanation offered)	1
						Fiscal fine (£250 - together with other charge(s))	1
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50)	5
						PF Warning Letter	1
					No action	5	
						No action	5
		Restriction on gatherings in private dwellings (level 4)	605				
			Attend an indoor social gathering of more than 2 in another person's address	268			
					Court	76	
						Summary complaint. FG after trial	1
						Summary complaint, PG	23
						Summary complaint (JP Court), PG. Withdrawn (legal advice), NG plea accepted, PG other charge(s)	1
						Summary complaint, NG plea accepted, PG to other charge(s)	36
						Summary complaint, NG plea accepted (co-accused PG)	1
						Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
						Summary complaint (JP Court), NG plea accepted, PG to other charge(s)	2
						Summary complaint, discontinued (accused deceased)	2

							Summary complaint, discontinued (accused vulnerable, circumstances of offence)	1
							Summary complaint, discontinued (mitigating circumstances)	1
							Summary complaint, discontinued	2
							Summary complaint (JP Court), discontinued (mitigating circumstances)	1
							Summary complaint (JP Court), discontinued (age of offence)	1
							Petition, not indicted on this charge	3
					Direct measure	123		
							Fiscal fine (£325 - together with other charge(s))	2
							Fiscal fine (£250)	2
							Fiscal fine (£250 - together with other charge(s))	2
							Fiscal fine (£175)	1
							Fiscal fine (£175 - together with other charge(s))	3
							Fiscal fine (£125 - together with other charge(s))	8
							Fiscal fine (£125)	21
							Fiscal fine (£50)	57
							Fiscal fine (£50 - together with other charge(s))	1
							Fiscal fine (£50). Withdrawn (remanded for another case). No action.	1
							Fiscal fine (£50). Withdrawn (untraced). No action	4
							PF Warning Letter	21
					Diversion	36		
							Failed diversion. Summary complaint (JP Court), PG	1
							Failed diversion. Summary complaint, NG plea accepted, PG to other charge(s)	1
							Failed diversion. PF Warning Letter	2
							Failed diversion, no further action	7
							Diversion to social work	21
							Referred to Children's Reporter	4
					No action	17		
							No action (further action disproportionate)	3
							No action (reporting delay)	1
							No action (insufficient evidence)	1
							No action	12
					Duplicate	16		
							Duplicate charge - no action	5
							Rolled into another case	11
				Gather with another person socially in their address /attend at their address	25			
					Court	11		
							Summary complaint, PG	1
							Summary complaint, NG plea accepted, PG to other charge(s)	8
							Summary complaint, discontinued (accused deceased)	1
							Summary complaint (JP Court), discontinued (co-accused deceased)	1
					Direct measure	10		
							Fiscal fine (£175)	1
							Fiscal fine (£175 - together with other charge(s))	1
							Fiscal fine (£125)	1
							Fiscal fine (£125 - together with other charge(s))	1
							Fiscal fine (£50)	4
							Fiscal fine (£30)	1
							Combined FF and compensation offer (FF £50)	1
					Diversion	1		
							Diversion to social work	1
					No action	2		
							No action	2
					Duplicate	1		
							Rolled into another case	1
				Host indoor social gathering in private dwelling (number not known/not specified)	16			
					Court	5		
							Summary complaint, PG	4

						Summary complaint, NG plea accepted, PG to other charge(s)	1
					Direct measure	3	
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50)	2
					Diversión	4	
						Failed social work diversion, no further action	3
						Referred to Children's Reporter	1
					No action	2	
						No action	2
					Duplicate	2	
						Rolled into another case	2
					Host indoor social gathering in private dwelling (3 people/"at least 3" present in total)	47	
					Court	20	
						Summary complaint, PG	7
						Summary complaint, NG plea accepted, PG to other charge(s)	8
						Summary complaint, discontinued (serving prison sentence on another matter)	1
						Summary complaint, discontinued (accused deceased)	3
						Summary complaint, discontinued (delay in execution of warrant)	1
					Direct measure	16	
						Fiscal fine (£50) refused. Summary complaint (JP Court), discontinued (failed service)	1
						Fiscal Fine (£50) refused. Summary complaint (JP Court), discontinued	1
						Fiscal fine (£125 - together with other charge(s))	2
						Fiscal fine (£125)	4
						Fiscal fine (£50)	8
					Diversión	3	
						Diversión to social work	2
						Failed social work diversion, no further action	1
					No action	3	
						No action - alternative charge (culpable and reckless conduct) used	1
						No action	2
					Duplicate	5	
						Duplicate - no action	2
						Rolled into another case	3
					Host indoor social gathering in private dwelling (4 people present in total)	49	
					Court	25	
						Summary complaint, PG	3
						Summary complaint, NG plea accepted, PG to other charge(s)	14
						Summary complaint, NG plea accepted (co-accused PG)	1
						Summary complaint, discontinued (accused deceased)	4
						Summary complaint (JP Court), discontinued (accused serving prison sentence)	1
						Petition, not indicted on this charge	2
					Direct measure	10	
						Fiscal fine (£175)	1
						Fiscal fine (£125 - together with other charge(s))	2
						Fiscal fine (£125)	1
						Fiscal fine (£50)	5
						PF Warning Letter	1
					Diversión	3	
						Failed social work diversion. No action (time barred)	1
						Failed social work diversion. No action	1
						Diversión to social work	1
					No action	3	
						No action - alternative charge (culpable and reckless conduct) used	1
						No action	2

				Duplicate	8		
						Duplicate - no action	4
						Rolled into another case	4
			Host an indoor gathering in private dwelling (5 people present in total)	12			
				Court	2		
						Summary complaint, PG	2
				Direct measure	4		
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50)	2
						PF Warning Letter	1
				No action	4		
						No action - alternative charge (culpable and reckless conduct) used	1
						No action (time barred)	1
						No action	2
				Duplicate	2		
						Duplicate charge - no action	1
						Rolled into another case	1
			Host an indoor gathering in private dwelling (6 people/"at least 6" present in total)	21			
				Court	5		
						Summary complaint, PG	2
						Summary complaint, discontinued (insufficient evidence)	1
						Summary complaint, discontinued (accused vulnerable, further act disprop)	1
						Summary complaint (JP Court), PG	1
				Direct measure	10		
						Fiscal fine (£250 - together with other charge(s))	1
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£125 - together with other charge(s)).	
						Untraced. Withdrawn. No further action.	1
						Fiscal fine (£125)	2
						Fiscal fine (£50)	5
				Diversion	2		
						Diversion to social work	1
						Failed diversion. PF Warning Letter	1
				No action	4		
						No action (marking delay)	1
						No action	2
						Roll up	1
			Host an indoor social gathering in dwelling (7 people/"at least 7" present in total)	20			
				Court	1		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
				Direct measure	11		
						Fiscal fine (£250 - together with other charge(s))	1
						Fiscal fine (£125)	1
						Fiscal fine (£50)	7
						PF Warning Letter	2
				Diversion	5		
						Diversion to social work	3
						Failed diversion. PF Warning Letter	1
						Failed diversion. No further action (serving prison sentence)	1
				No action	3		
						No action (insufficient evidence)	1
						No action	2
			Host indoor gathering in private dwelling (8-9 people in total)	14			
				Court	5		
						Summary complaint, NG plea accepted, PG to other charge(s)	4
						Summary complaint, discontinued (roll up)	1
				Direct measure	7		
						Fiscal fine (£175)	1
						Fiscal fine (£50)	6
				Diversion	1		

							Diversion to social work	1
					No action	1		
							No action - alternative charge used	1
					12			
					Court	3		
							Summary complaint, PG	1
							Summary complaint, charge withdrawn at trial (FNG)	1
							Summary complaint, discontinued (roll up)	1
					Direct measure	7		
							Fiscal fine (£125)	1
							Fiscal fine (£50)	6
					Diversion	2		
							Diversion to social work	1
							Failed social work diversion. Fiscal fine (£50)	1
					28			
					Court	5		
							Summary complaint, PG	3
							Summary complaint, Found Not Guilty after trial	1
							Petition, reduced to summary - no action on this charge	1
					Direct measure	20		
							Fiscal fine (£175 - together with other charge(s))	1
							Fiscal fine (£50)	16
							PF Warning Letter	3
					No action	1		
							No action - alternative charge (culpable and reckless conduct) used	1
					Duplicate	2		
							Rolled into another case	2
					10			
					Court	5		
							Summary complaint, PG	1
							Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
							Summary complaint (JP Court), PG	1
							Summary complaint (JP Court), discontinued (age of offence)	2
					Direct measure	5		
							Fiscal fine (£125)	1
							Fiscal fine (£50)	3
							PF Warning Letter	1
					10			
					Direct measure	8		
							Fiscal fine (£325)	1
							Fiscal fine (£50)	7
					Diversion	2		
							Diversion to social work	1
							Failed social work diversion, no further action	1
					14			
					Court	7		
							Summary complaint, PG	2
							Summary complaint, NG plea accepted, PG to other charge(s)	3
							Summary complaint, discontinued (not criminal - part of extended household "bubble")	1
							Summary complaint (JP Court), discontinued (accused deceased)	1
					Direct measure	4		
							Fiscal fine (£250 - together with other charge(s))	1
							Fiscal fine (£125 - together with other charge(s))	1
							Fiscal fine (£125)	2
					No action	2		
							No action	2
					Duplicate	1		

							Rolled into another case	1
			Attend post-wedding party/wake (15-25 people)	8				
				Court	3			
						Summary complaint, PG		2
						Summary complaint, discontinued. Fiscal fine (£175)		1
				Direct measure	5			
						Fiscal fine (£50)		5
			Attend indoor social gathering at Airbnb /holiday rental accomodation	19				
				Direct measure	19			
						Fiscal fine (£50)		3
						Fiscal fine (£50). Accused untraced. Withdrawn. No further action.		2
						PF Warning Letter		14
			Force entry/gain access to dwelling without permission and gather there socially	12				
				Direct measure	6			
						Fiscal fine (£175)		2
						Fiscal fine (£125)		3
						Fiscal fine (£125 - together with another charge)		1
				Diversion	6			
						Diversion to social work		4
						Failed diversion, no further action		2
			Attend outdoor gathering at private dwelling (5-15 people present in total) - maximum: 2/4 from 2 households	<8				
				Not reportable	n/a			1
			Gathering for a criminal purpose	<8				3
				Not reportable	n/a			1
			Other	7				
				Court	1			
						Summary complaint (JP Court), PG		1
				Direct measure	2			
						Fiscal fine (£125)		1
						Fiscal fine (£50)		1
				Diversion	2			
						Referred to Children's Reporter		2
				No action	2			
						No action (further action disproportionate)		2
	Level 3 restrictions	101						
			Participate in outdoor gathering in public place - disorder/protest	8				
				Court	7			
						Summary complaint. FG after trial		1
						Summary complaint, NG plea accepted, PG to other charge(s)		3
						Summary complaint, NG plea accepted (co-accused PG)		1
						Summary complaint, PG		1
						Petition, not indicted on this charge		1
				No action	1			
						No action		1
			Host/attend social gathering in indoor public place (9-10 present in total) - maximum: 4/6 people from 2 households	10				
				Direct measure	9			
						Fiscal fine (£250 - together with other charge(s))		2
						Fiscal fine (£175)		6
						Fiscal fine (£175 - together with other charge(s))		1
				Diversion	1			
						Failed social work diversion. Fiscal fine (£175)		1
			Attend indoor social gathering in private dwelling	38				
				Court	7			
						Summary complaint, PG		2
						Summary complaint, discontinued (accused PG to other matters)		1
						Summary complaint, discontinued (co-accused PG)		3
						Summary complaint (JP Court), PG		1
				Direct measure	21			
						Fiscal fine (£175)		7
						Fiscal fine (£175- together with other charge(s))		1
						Fiscal fine (£125)		6
						Fiscal fine (£125 - together with other charge(s))		1

						Fiscal fine (£50)	4
						PF Warning Letter	2
					Diversion	3	
						Diversion to social work	1
						Referral to Children's Reporter	2
					No action	6	
						No action (FPN already issued and not challenged)	3
						No action (further action disproportionate)	1
						No action	2
					Duplicate	1	
						Duplicate - no action	1
				Host an indoor gathering in private dwelling (3 to 5 people present in total)	16		
					Court	7	
						Summary complaint, PG	4
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint (JP Court), discontinued	1
					Direct measure	5	
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50)	1
						PF Warning Letter	3
					Diversion	2	
						Failed social work diversion, no further action	1
						Diversion to social work	1
					No action	1	
						No action	1
					Duplicate	1	
						Rolled into another case	1
				Host an indoor social gathering in dwelling (6 people to "more than 10" present)	14		
					Court	1	
						Summary complaint, PG	1
					Direct measure	9	
						Fiscal fine (£175)	2
						Fiscal fine (£125)	3
						Fiscal fine (£50)	2
						PF Warning Letter	2
					No action	3	
						No action - alternative charge (culpable and reckless conduct) used	1
						No action (further action disproportionate)	1
						No action	1
					Duplicate	1	
						Rolled into another case	1
				Other gatherings in dwellings, including more than 15, outdoors or at holiday rental accomodation	14		
					Court	1	
						Summary complaint (JP Court), discontinued (no longer in public interest)	1
					Direct measure	11	
						Fiscal fine (£400)	1
						Fiscal fine (£325)	1
						Fiscal fine (£125)	4
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50)	2
						PF Warning Letter	2
					No action	2	
						No action (reporting delay)	1
						No action	1
				Other	1		
					Court	1	
						Summary complaint, NG plea accepted, PG to other charge(s)	1
		Level 2 restrictions	30				
				Participate in gathering in indoor/outdoor public place	<8		
					Not reportable	n/a	
				Attend an indoor gathering in private dwelling (indoor gatherings prohibited)	11		
					Court	9	
						Summary complaint, PG	3

						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, discontinued (failed service)	3
						Summary complaint (JP Court), PG (granted absolute discharge)	1
						Summary complaint (JP Court), discontinued (failed service)	1
				Direct measure	2		
						Fiscal fine (£175)	1
						Fiscal fine (£125). Withdrawn. No further action	1
			Host an indoor social gathering in dwelling	10			
				Court	5		
						Summary complaint, PG	3
						Summary complaint, NG plea accepted, PG to other charge(s)	2
				Direct measure	3		
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50)	2
				Diversión	1		
						Diversión to social work	1
				Duplicate	1		
						Rolled into another case	1
			Other	<8			
				Not reportable	n/a		
		Level 1 restrictions	12				
			Host/attend indoor social gathering in dwelling/outbuilding (indoor gatherings prohibited)	12			
				Court	4		
						Summary complaint, PG	3
						Summary complaint, NG plea accepted, PG to other charge(s)	1
				Direct measure	4		
						Fiscal fine (£250)	1
						Fiscal fine (£30)	1
						PF Warning Letter	2
				Diversión	2		
						Diversión to social work	2
				Duplicate	2		
						Duplicate - no action	2
		Level 0 restrictions	1				
			Other	1			
				Direct measure	1		
						Fiscal fine (£50)	1
		Not known - sensitive case	11				
			Not known - sensitive case	11			
				Not known	11	Not known - sensitive case	11
		Alleged contravention of reg 5(3) - mistakenly labelled as reg 5(1)	3				
			Other	3			
				Diversión	1		
						Diversión to social work	1
				No action	2		
						No action	2
		Regulations no longer in force	1				
			Other	1			
				No action	1		
						No action	1
		Did not contravene regulations in force at time	10				
			Other	10			
				Court	4		
						Summary complaint. Charge withdrawn at trial (Found Not Guilty)	1
						Summary complaint, NG plea accepted, PG to other charge(s)	3
				Diversión	2		
						Diversión to social work	1
						Diversión to social work	1

						Referred to Children's Reporter	1
					No action	3	
						No action (not a crime)	2
						No action (insufficient evidence)	1
					Duplicate	1	
						Rolled into another case	1
Reg 5(2)	11	Obstruct person carrying out a function under regulations	11				
			Other	11			
				Court	4		
						Summary complaint, PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, discontinued (accused deceased)	1
				Direct measure	4		
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£125)	1
						Fiscal fine (£125 - together with other charge(s))	1
						Fiscal fine (£50 - together with other charge(s))	1
				No action	2		
						No action	2
				Other	1		
						Rolled into another case - alternative charge used	1
		Fail to comply with reasonable instruction/direction/prohibition notice	12				
			Other	12			
				Court	7		
						Summary complaint, PG	2
						Summary complaint, FG after trial. Granted absolute discharge (no conviction)	1
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, discontinued (insufficient evidence - accused homeless)	2
				Direct measure	1		
						Fiscal fine (£125 - together with other charge(s))	1
				Diversion	1		
						Failed social work diversion, no further action	1
				No action	3		
						No action	3
		Alleged contravention of reg 5(1) - mistakenly labelled as reg 5(3)	8				
			Other	8			
				Court	2		
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Petition, not indicted on this charge	1
				Direct measure	4		
						Fiscal fine (£175 - together with other charge(s))	2
						Fiscal fine (£50)	2
				No action	1		
						No action (reporting delay)	1
				Duplicate	1		
						Rolled into another case	1
		Incorrect charge - should have been International Travel regs, reg 9(1)	1				
			Other	1			
				Direct measure	1		
						PF Warning Letter	1
		Not clear that contravened regulations in force at time	2				
			Other	2			
August 2021 regulations, reg 16(1)	13			Court	2		
						Summary complaint, NG plea accepted, PG to other charge(s)	2
		Requirement to collect and share "track and trace" data (reg 3)	1				
			Other	1			
				No action	1		
						No action (further action disproportionate)	1
		Fail to wear face covering in certain indoor places (reg 5)	5				
			Other	5			

					Court	5		
							Summary complaint, PG	2
							Summary complaint, discontinued (insufficient evidence)	1
							Summary complaint, NG plea accepted, PG to other charges	2
		Fail to wear face covering on public transport (reg 7)	2					
			Other	2				
				2	No action	2		
							No action (further action disproportionate)	1
							No action	1
		Did not contravene regulations in force at time	5					
			Other	5				
				2	Court	2		
							Summary complaint, PG	1
							Summary complaint, NG plea accepted, PG to other charge(s)	1
					No action	2		
							No action (evidential issues)	1
							No action	1
					Duplicate	1		
							Rolled into another case	1
The International Travel regs Regulation 5(1)	2	Requirement to complete/update passenger information form	2					
			Other	2				
				2	Court	2		
							Summary complaint, discontinued (no longer in public interest)	1
							Summary complaint, discontinued (age of offence, no longer in public interest)	1
Regulation 5(1)(a)	1	Fail to possess testing package (reg 5)	1					
			Other	1				
				1	Court	1		
							Summary complaint, discontinued (no longer in public interest)	1
Regulation 9(1)	37	Requirement to stay in specified address (reg 6)	25					
			Fail to self-isolate at specified address - at other/unknown location(s)	10				
				1	Court	1		
							Summary complaint, discontinued (accused believed to have left country)	1
					Direct measure	6		
							FF (£250). Withdrawn (untraced). Summary complaint (JP), discontinued (failed service)	1
							Fiscal fine (£125)	2
							Fiscal fine (£50)	1
							PF Warning Letter	2
					No action	3		
							No action (merged into single charge)	3
			Fail to self-isolate at specified address - at pub/restaurant/takeaway	12				
				5	Court	5		
							Summary complaint. PG	1
							Summary complaint, NG plea accepted, PG to other charge(s)	1
							Summary complaint, NG plea accepted (co-accused PG)	3
					Direct measure	4		
							PF Warning Letter	4
					No action	3		
							No action - charges merged	3
			Other	3				
				1	Court	1		
							Summary complaint, discontinued (evidential issues, remanded on solemn case)	1
					Direct measure	1		
							Fiscal fine (£250)	1

				No action	1		
						No action (insufficient evidence)	1
		Requirement to stay in managed accomodation (reg 6B)	10				
			Fail to isolate in hotel quarantine - leave (or attempt to leave) on arrival/during isolation period	10			
				Court	2		
						Summary complaint. Discontinued (acceptable explanation offered)	2
				Direct measure	5		
						Fiscal fine (£500). Refused. Summary complaint (JP Court). PG	1
						Fiscal fine (£175)	1
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£125)	1
						PF Warning Letter	1
				No action	3		
						No action (insufficient evidence)	2
						No action (accused untraced, further action disproportionate)	1
		Did not contravene regulations in force at time	2				
			Other	2			
				Court	1		
						Petition, not indicted on this charge	1
				No action	1		
						No action (age of offence)	1
Regulation 9(2)	8						
		Alleged contravention of reg 9(1) - mistakenly labelled as reg 9(2)	4				
			Other	4			
				Direct measure	2		
						Fiscal fine (£50)	2
				Diversion	1		
						Diversion to social work	1
				No action	1		
						No action	1
		Incorrect charge - should have been "main" regulations in force at time	4				
			Other	4			
				Court	2		
						Summary complaint. PG	1
						Summary complaint, NG plea accepted, PG to other charge(s)	1
				No action	2		
						No action (further action disproportionate)	1
						No action	1
Regulation 9(3)	4						
		Did not contravene regulations in force at time	4				
			Other	4			
				Court	1		
						Summary complaint. PG	1
				No action	1		
						No action	1
				Duplicate	2		
						Rolled into another case	2
Regulation 9(4)	3						
		Alleged contravention of reg 9(1) - mistakenly labelled as reg 9(4)	3				
			Other	3			
				No action	3		
						No action (insufficient evidence)	3
The Coronavirus Act 2020 Schedule 21, para 45(1)(a)	37						
		Fail to comply with direction/etc by public health officer/police constable/etc.	1				
			Other	1			
				Court	1		
						Indicted. NG plea accepted, PG to other charge(s)	1
		Incorrect charge - should have been "main" regulations in force at time	22				
			Fail to comply with direction by police officer to return home/disperse gathering	10			
				Court	5		
						Summary complaint, PG	2
						Summary complaint, NG plea accepted, PG to other charge(s)	2

						Summary complaint, NG accused (co-accused PG)	1
				No action	1		
						No action (further action disproportionate)	1
				Duplicate	4		
			Other	12		Rolled into another case	4
				Court	1		
						Summary complaint, discontinued (accused serving prison sentence)	1
				Direct measure	7		
						Fiscal fine (£125)	6
						PF Warning Letter	1
				No action	4		
						No action	4
	Did not contravene regulations in force at time	14	Fail to self-isolate while claiming to have tested positive/have symptoms/close contact claiming to have symptoms	8			
				Court	4		
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, discontinued (failed service)	1
				Direct measure	1		
						Fiscal fine (£50)	1
				No action	3		
						No action	3
				Duplicate	1		
						Rolled into another case	1
			Other	6			
				Court	4		
						Summary complaint, PG	2
						Summary complaint, NG plea accepted, PG to other charge(s)	1
						Summary complaint, NG accepted (witness issues)	1
				No action	2		
						No action - alternative charge (culpable and reckless conduct) used	1
Schedule 21, para 45(1)(e)	3	Incorrect charge - should have been reg 8(3), March 2020 regulations	3			No action	1
			Other	3			
Schedule 22, para 21(1)	45			No action	3		
		Incorrect charge - should have been reg 8(1) or 8(3), March 2020 regulations	1			No action	3
			Other	1			
				Court	1		
						Summary complaint, PG	1
		Incorrect charge - should have been reg 15(1), September 2020 regulations	2				
			Other	2			
				Direct measure	1		
						Fiscal fine (£125 - together with other charge(s))	1
				No action	1		
						No action	1
		Incorrect charge - should have been reg 5(1), Local Levels regulation	36				
			Host/attend a social gathering indoors/outdoors at dwelling, including holiday rental accomodation	34			
				Court	9		
						Summary complaint, PG	6
						Summary complaint, NG plea accepted, PG to other charge(s)	2
						Summary complaint, discontinued (failed service)	1
				Direct measure	24		
						Fiscal fine (£50). Refused. Summary complaint (JP court), discontinued	1
						Fiscal fine (£400)	2
						Fiscal fine (£250 - together with other charge(s))	1
						Fiscal fine (£250 - together with other charge(s))	1
						Fiscal fine (£175)	3
						Fiscal fine (£125)	4
						Fiscal fine (£50)	11

							PF Warning Letter	1
					Duplicate	1		
			Other	2			Duplicate - no action	1
					Court	1		
							Summary complaint, Crown motion to adjourn refused. Deserted simpliciter.	1
					No action	1		
		Did not contravene regulations in force at time	6				No action (further action disproportionate)	1
			Other	6				
					Court	1		
							Summary complaint, discontinued (wrong charge used)	1
					Direct measure	5		
							Fiscal fine (£50)	1
							Fiscal fine (£50 - together with other charge(s))	2
							PF Warning Letter	2
Total	2663							

APPENDIX 7 – GENERAL TRENDS ACROSS COVID-19
REGULATIONS AND THE CORONAVIRUS ACT 2020

Circumstances	No.	Initial marking type	No.	Outcome	No.
Fail to wear a face covering in specified indoor premises on public transport	32	Court	17	Summary complaint, PG	5
				Summary complaint, NG plea accepted, PG to other charge(s)	8
				Summary complaint, discontinued (insufficient evidence)	1
				Summary complaint, discontinued (difficulty in establishing jurisdiction)	1
				Summary complaint (JP Court), PG.	1
				Summary complaint (JP Court), withdrawn at trial (found Not Guilty)	1
			Direct measure	4	
				Fiscal fine (£175- together with other charge(s))	1
				Fiscal fine (£50)	1
				PF Warning. Challenged. Marked summary complaint. No action in error.	1
				PF Warning Letter	1
			No action	10	
				No action (serving prison sentence for another case)	1
				No action (further action disproportionate)	1
				No action	8
			Duplicate	1	
				Rolled into another case	1
Fail to self-isolate after positive test while symptomatic in close contact with infected person	74	Court	30		
				Petition. PG by s76 indictment	1
				Indicted. NG plea accepted, PG to other charge(s)	1
				Summary complaint, PG	4
				Summary complaint, NG plea accepted, PG to other charge(s)	10
				Summary complaint - outcome not recorded (researcher's error)	1
				Summary complaint, discontinued (failed service)	1
				Summary complaint, discontinued	2
				Summary complaint (JP court), NG plea accepted, PG to other charge(s)	1
				Petition, not indicted on this charge (PG by s76 to other charges)	1
				Petition, not indicted on this charge (insufficient evidence)	2
				Petition, not indicted on this charge	6
			Direct measure	5	
				Fiscal fine (£125)	1
				Fiscal fine (£50)	3
				PF Warning Letter	1
			Diversion	6	
				Failed social work diversion, no further action	1
				Referred to Children's Reporter	5
			No action	27	
				No action (accused serving prison sentence)	1
				No action (further action disproportionate)	4
				No action (not a crime)	1
				No action (insufficient evidence on more serious charge)	1
				No action (insufficient evidence)	1
				No action (evidential issues)	1
				No action (age of offence)	1
				No action - alternative charge (culpable and reckless conduct) used	1
				No action - alternative charge (section 38) used	1
				No action	14
			Duplicate	7	
				Duplicate - no action	1
				Rolled into another case	6
Fail to self-isolate at home quarantine in hotel following international travel	46	Court	11		
				Summary complaint. PG	1
				Summary complaint, NG plea accepted, PG to other charge(s)	3
				Summary complaint, NG plea accepted (co-accused PG)	3
				Summary complaint, discontinued (evidential issues, remanded on solemn case)	1
				Summary complaint, discontinued (accused believed to have left country)	1
				Summary complaint. Discontinued (acceptable explanation offered)	2
			Direct measure	20	
				Fiscal fine (£500). Refused. Summary complaint (JP Court). PG	1
				FF (£250). Withdrawn (untraced). Summary complaint (JP), discontinued (failed service)	1

				Fiscal fine (£250)	1
				Fiscal fine (£175)	1
				Fiscal fine (£175 - together with other charge(s))	1
				Fiscal fine (£125)	3
				Fiscal fine (£50)	3
				PF Warning Letter	9
			Diversion	1	
				Diversion	1
			No action	14	
				No action - charges merged	6
				No action (accused untraced, further action disproportionate)	1
				No action (insufficient evidence)	6
				No action	1
	Fail to maintain physical distancing other behaviour perceived as "risky" (e.g. touching surfaces/spitting)	15			
			Court	5	
				Summary complaint, PG	1
				Summary complaint, NG plea accepted, PG to other charge(s)	3
				Summary complaint (JP court), discontinued	1
			Direct measure	4	
				Fiscal fine (£250)	1
				Fiscal fine (£50)	3
			No action	4	
				No action - reporting delay	1
				No action (not criminal)	1
				No action	2
			Duplicate	2	
				Duplicate - no action	1
				Rolled into another case	1
	Leave home*	472			
	* excluding charges counted under other categories listed		Court	221	
				Indicted. PG	2
				Indicted, NG plea accepted, PG to other charge(s)	23
				Indicted, discontinued (witness issues)	1
				Petition, not indicted on this charge (PG by s76)	1
				Petition. Reduced to summary complaint. NG plea accepted, PG to other charge(s)	2
				Petition, no further action (accused deceased)	1
				Petition, not indicted on this charge	3
				Petition. Rolled into another case	1
				Summary complaint. Found Guilty after trial	4
				Summary complaint, PG	46
				Summary complaint, NG plea accepted, PG to other charge(s)	97
				Summary complaint, NG plea accepted (plea agreement across multiple cases)	3
				Summary complaint. Charge withdrawn at trial (Found Not Guilty)	1
				Summary complaint, discontinued (plea agreement across multiple cases)	3
				Summary complaint, discontinued (PG to other, similar offences)	1
				Summary complaint, discontinued (accused serving prison sentence)	2
				Summary complaint, discontinued (no longer in public interest, given backlog)	1
				Summary complaint, discontinued (accused unfit for trial)	1
				Summary complaint, discontinued (public interest, age of offence)	4
				Summary complaint, discontinued (failed service)	2
				Summary complaint, discontinued (rolled into petition).	2
				Summary complaint, discontinued	8
				Marked for summary complaint, discontinued (accused deceased) before service	1
				Summary complaint, then re-marked for diversion. Mistakenly not actioned	1
				Summary complaint (JP Court), PG	4
				Summary complaint (JP court), NG plea accepted, PG to other charge(s)	1
				Summary complaint (JP Court), Found Not Guilty after trial	1
				Summary complaint (JP Court). CMA refused. Deserted simpliciter	1
				Summary complaint (JP Court), discontinued (plea agreement)	1
				Summary complaint (JP court), discontinued (failed service)	1
				Summary complaint (JP court), discontinued (no longer in public interest)	1
			Direct measure	82	
				Work Offer (30 hours) - together with other charge(s)	1
				Fiscal fine (£250)	4
				Fiscal fine (£250 - together with other charge(s))	2
				Fiscal fine (£175)	5

				Fiscal fine (£175 - together with other charge(s))	8
				Fiscal fine (£125)	19
				Fiscal fine (£125) refused. Summary complaint (JP court), discontinued	2
				Fixed penalty (RT offences) (£100 - together with other charge(s))	1
				Fiscal fine (£50)	25
				Fiscal fine (£50 - together with other charge(s))	4
				Fiscal fine (£50). Withdrawn (deportation proceedings)	1
				Fiscal fine (£50). Accused untraced, withdrawn. No further action	1
				Fiscal fine (£50) issued and withdrawn	1
				Fiscal fine (£50). Refused. No further action	1
				PF Warning Letter	7
		Diversion	32		
				Diversion to social work	3
				Failed SW diversion. Summary complaint, NG plea accepted, PG to other charge(s)	1
				Failed social work diversion, no further action	3
				Referred to Children's Reporter	25
		No action	100		
				No action - alternative charge (s38 CJLSA 2010) used	1
				No action - alternative charge (breach of the peace) used	1
				No action - alternative charge (correct regulations) used	2
				Merged with another charge	1
				No action (FPN issued)	1
				No action (FPN paid)	1
				No action (further action disproportionate)	2
				No action (mitigating circumstances)	1
				No action (permissible reason)	1
				No action (age of offence)	1
				No action (reporting delay)	1
				No action (further action disproportionate)	7
				No action (insufficient evidence)	2
				No action (not criminal)	2
				No action	76
		Duplicate	35		
				Duplicate - no action	5
				Rolled into another case	30
		Other	2		
				No action? Record unclear	1
				Outcome not noted (researcher's error)	1
		"Non-essential" travel contravening travel restrictions*	240		
		*excluding charges counted under protest, football-related disorder and other public outdoor gatherings			
			Court	100	
				Indicted. PG	1
				Indicted. NG plea accepted, PG to other charge(s)	5
				Summary complaint, PG	19
				Summary complaint, NG plea accepted, PG to other charge(s)	34
				Summary complaint, NG plea accepted (plea across multiple cases)	2
				Summary complaint, NG plea accepted (co-accused PG to other charge(s))	1
				Summary complaint, NG plea accepted	1
				Summary complaint. FNG after trial	1
				Summary complaint. PG. PG withdrawn (issue with charge), deserted simpliciter	1
				Summary complaint, discontinued (mitigating circumstances)	1
				Summary complaint, discontinued (issues with drafting of main charge)	1
				Summary complaint, discontinued (evidential issues with main charge)	2
				Summary complaint, discontinued (serving prison sentence)	1
				Summary complaint, discontinued (accused deceased)	1
				Summary complaint, discontinued (witness issues)	1
				Summary complaint, discontinued (insufficient evidence)	3
				Summary complaint, discontinued (wrong regulations)	1
				Summary complaint, discontinued (time barred)	1
				Summary complaint, discontinued (complaint not signed)	1
				Summary complaint, discontinued	3
				Summary complaint (JP Court), PG	9
				Summary complaint (JP Court), NG plea accepted, PG to other charge(s)	2
				Summary complaint (JP Court), discontinued (delay in executing warrant)	2
				Summary complaint (JP Court), discontinued (failed service)	3
				Summary complaint (JP court), discontinued	2
				Petition, not indicted on this charge	1
		Direct measure	66		
				PF Work Offer (40 hours)	

				Fiscal fine (£325 - together with other charge(s))	1
				Fiscal fine (£250)	1
				Fiscal fine (£250 - together with other charge(s))	1
				Fiscal fine (£175 - together with other charges)	8
				Fiscal fine (£125)	12
				Fiscal fine (£125) - together with other charge(s))	5
				Fiscal fine (£50) - refused. Summary complaint (JP Court), discontinued	1
				Fiscal fine (£50)	20
				Fiscal fine (£50), later withdrawn (reasonable explanation)	2
				Fiscal fine (£50 - together with other charge(s))	3
				Fiscal fine (£50). Refused. No further action.	2
				PF Warning Letter. Challenged. Marked for summary complaint (JP), but not actioned	1
				PF Warning letter	8
			Diversion	8	
				Diversion to social work	2
				Failed social work diversion. No further action	1
				Referred to Children's Reporter	5
			No action	40	
				No action - alternative charge (culpable and reckless conduct) used	1
				No action (further action disproportionate)	6
				No action (reporting delay)	1
				No action (time-barred on receipt)	5
				No action (no jurisdiction)	1
				No action (insufficient evidence)	1
				No action	25
			Duplicate	26	
				Duplicate - no action	6
				Rolled into another case	20
	Enter or leave Scotland	47			
			Court	17	
				Indicted. PG	1
				Indicted. NG plea accepted, PG to other charges	1
				Summary complaint, NG plea accepted, PG to other charge(s)	2
				Summary complaint, charge withdrawn at trial (FNG)	1
				Summary complaint, discontinued (co-accused PG)	1
				Summary complaint, discontinued (further action disproportionate)	1
				Summary complaint, discontinued (failed service)	1
				Summary complaint (JP Court), discontinued (failed service)	2
				Summary complaint (JP Court), discontinued. PF Warning Letters issued.	3
				Petition, not indicted on this charge	4
			Direct measure	13	
				Fiscal fine (£125 - together with other charge(s))	1
				Fiscal fine (£100)	1
				Fiscal fine (£50)	8
				Fiscal fine (£50 - together with other charge(s))	1
				PF Warning Letter	2
			No action	14	
				No action (insufficient evidence)	7
				No action (accused deceased)	1
				No action	6
			Duplicate	3	
				Duplicate - no action	3
	Gather in public with one other person from a different household	14			
			Court	3	
				Summary complaint, PG	2
				Summary complaint, NG plea accepted, PG to other charge(s)	1
			Direct measure	2	
				Fiscal fine (£125)	1
				Fiscal fine (£50)	1
			Diversion	2	
				Diversion to social work	1
				Referred to Children's Reporter	1
			No action	5	
				No action - reporting delay	1

				No action (not a crime)	4
		Duplicate	2	Duplicate charge - no action	2
	Organise participate in (or travel to) protest refuse to comply with police direction to disperse from protest	35			
		Court	28		
				Indicted. Discontinued (not criminal)	2
				Summary complaint, PG	4
				Summary complaint. Found Guilty after trial	2
				Summary complaint, Found Guilty after trial. Granted absolute discharge (no conviction)	1
				Summary complaint, NG plea accepted, PG to other charge(s)	4
				Summary complaint, Found Not Guilty after trial	1
				Summary complaint, withdrawn at trial (Found Not Guilty)	2
				Summary complaint, discontinued (wrong regulations)	1
				Summary complaint, discontinued (age of offence, witnesses not available)	1
				Summary complaint, discontinued (insufficient evidence)	4
				Summary complaint, discontinued	6
		Direct measure	4		
				Fiscal fine (£125 - together with other charge(s))	3
				PF Warning Letter	1
		No action	3		
				No action	3
	Football-related public disorder offending	23			
		Court	20		
				Summary complaint, Found Guilty after trial	1
				Summary complaint, PG	5
				Summary complaint, NG plea accepted, PG to other charge(s)	10
				Summary complaint, Crown motion to adjourn refused. Deserted simpliciter.	1
				Summary complaint, discontinued (insufficient evidence)	2
				Petition, not indicted on this charge	1
		Direct measure	3		
				Fiscal fine (£125 - together with other charge(s))	2
				Fiscal fine (£50)	1
	Participate in social other public outdoor gathering (3 to 9 people)	25			
		Direct measure	10		
				Fiscal fine (£250)	1
				FF (£125), challenged. Summary complaint (JP), discontinued (failed service)	2
				Fiscal fine (£125)	6
				Fiscal fine (£50)	1
		Diversion	11		
				Failed diversion. Summary complaint, NG plea accepted, PG to other charge(s)	1
				Failed social work diversion, no further action	2
				Diversion to social work	8
		No action	4		
				No action (timebarred on receipt)	1
				No action (not criminal)	2
				No action	1
	Participate in social other public outdoor gathering ("10 to 15" to "more than 200" people)	16			
		Court	11		
				Summary complaint. PG	3
				Summary complaint, NG plea accepted, PG to other charge(s)	6
				Summary complaint, NG plea accepted (co-accused PG)	1
				Summary complaint, discontinued (co-accused PG)	1
		Direct measure	1		
				Fiscal fine (£175 - together with other charge(s))	1
		Diversion	1		
				Diversion to social work	1
		No action	2		
				No action	2
		Duplicate	1		
				Rolled into another case	1
Gatherings in public indoor places					
	Attend social gathering party at indoor public place (including in hotels, "raves" and pub "lock-ins") (excluding cars)	32			
		Court	2		
				Summary complaint, PG	1
				Summary complaint (JP Court), PG	1
		Direct measure	20		
				Fiscal fine (£500)	1
				FF (£250). Refused. Summary complaint (JP), discontinued (acceptable explanation offered)	1

				Fiscal fine (£250 - together with other charge(s))	3
				Fiscal fine (£175)	6
				Fiscal fine (£175 - together with other charge(s))	2
				Fiscal fine (£125)	1
				Fiscal fine (£125 - together with other charge(s))	2
				Fiscal fine (£50)	1
				PF Warning Letter	3
			Diversion	8	
				Diversion to social work	4
				Failed social work diversion. Fiscal fine (£175)	1
				Failed social work diversion. No further action	2
				Referred to Children's Reporter	1
			No action	2	
				No action	2
	Attend post-wedding party wake public commemoration	13			
			Court	6 Summary complaint, PG	3
				Summary complaint, NG plea accepted, PG to other charge(s)	1
				Summary complaint, discontinued (co-accused PG)	1
				Summary complaint, discontinued. Fiscal fine (£175)	1
			Direct measure	5	
				Fiscal fine (£50)	5
			Duplicate	2	
				Duplicate - no action	2
Host gathering indoors in private dwelling					
	Allow another person into dwelling for social non-essential purposes	32			
			Court	9	
				Summary complaint, PG	2
				Summary complaint, NG plea accepted, PG to other charge(s)	4
				Summary complaint, discontinued (not criminal - part of extended household "bubble")	1
				Summary complaint (JP Court), discontinued (accused deceased	1
				Petition. Not indicted on this charge	1
			Direct measure	11	
				Fiscal fine (£250 - together with other charge(s))	1
				Fiscal fine (£125 - together with other charge(s))	2
				Fiscal fine (£125)	3
				Fiscal fine (£50)	3
				Fiscal fine (£50). Refused. Summary complaint (JP Court). Discontinued (not in public interest)	1
				PF Warning Letter	1
			No action	10	
				No action - reporting delay not criminal	1
				No action (further action disproportionate)	1
				No action	8
			Duplicate	2	
				Rolled into another case	2
	Host indoor social gathering in dwelling (number not known not specified)	54			
			Court	15	
				Summary complaint, PG	6
				Summary complaint, NG plea accepted, PG to other charge(s)	4
				Summary complaint (JP Court), PG	2
				Summary complaint (JP Court), discontinued (failed service)	1
				Summary complaint, discontinued (accused health)	1
				Summary complaint, discontinued (insufficient evidence)	1
			Direct measure	18	
				Fiscal fine (£325)	1
				Fiscal fine (£250)	1
				Fiscal fine (£250 - together with other charge(s))	1
				Fiscal fine (£175)	1
				Fiscal fine (£175 - together with other charge(s))	1
				Fiscal fine (£125)	3
				Fiscal fine (£125 - together with other charge(s))	2
				Fiscal fine (£100). Withdrawn. FPN paid.	1
				Fiscal fine (£50)	4
				Fiscal fine (£50 - together with other charge(s))	1
				PF Warning Letter	2
			Diversion	4	
				Failed diversion, no further action	3
				Referred to Children's Reporter	1
			No action	14	

				No action - alternative charge (culpable and reckless conduct) used	2
				No action (further action disproportionate)	1
				No action (reporting delay)	1
				No action (insufficient evidence)	1
				No action	9
			Duplicate	3	
				Rolled into another case	3
	Host indoor social gathering in dwelling (3 people "at least 3" present in total)	73			
			Court	24	
				Summary complaint, PG	8
				Summary complaint, NG plea accepted, PG to other charge(s)	11
				Summary complaint, discontinued (serving prison sentence on another matter)	1
				Summary complaint, discontinued (accused deceased)	3
				Summary complaint, discontinued (delay in execution of warrant)	1
			Direct measure	25	
				Fiscal fine (£50) refused. Summary complaint (JP Court), discontinued (failed service)	1
				Fiscal Fine (£50) refused. Summary complaint (JP Court), discontinued	2
				Fiscal fine (£250 - together with other charge(s))	1
				Fiscal fine (£125)	4
				Fiscal fine (£125 - together with other charge(s))	3
				Fiscal fine (£50)	10
				PF Warning Letter	4
			Diversion	4	
				Diversion to social work	2
				Failed social work diversion, no further action	2
			No action	11	
				No action - alternative charge (culpable and reckless conduct) used	1
				No action - new charge added under correct regulations	1
				No action (imminent time bar, further action disproportionate)	1
				No action (insufficient evidence on more serious charge(s))	1
				No action	7
			Duplicate	9	
				Duplicate - no action	2
				Rolled into another case	7
	Host indoor social gathering in dwelling (4 people "at least 4" present in total)	89			
			Court	37	
				Summary complaint, PG	5
				Summary complaint, NG plea accepted, PG to other charge(s)	15
				Summary complaint, NG plea accepted (global plea)	2
				Summary complaint, NG plea accepted (co-accused PG)	1
				Summary complaint, PG. Plea later withdrawn, deserted simpliciter	1
				Summary complaint, discontinued (plea agreement)	1
				Summary complaint, discontinued (failed service)	1
				Summary complaint, discontinued (wrong regulations)	1
				Summary complaint, discontinued (accused deceased)	4
				Summary complaint (JP Court), discontinued	1
				Summary complaint (JP Court), discontinued (age of offence)	2
				Summary complaint (JP Court), discontinued (accused serving prison sentence)	1
				Petition, not indicted on this charge	2
			Direct measure	23	
				Fiscal fine (£175)	1
				Fiscal fine (£125 - together with other charge(s))	2
				Fiscal fine (£125)	4
				Fiscal fine (£50)	10
				PF Warning Letter	6
			Diversion	4	
				Diversion to social work	2
				Failed social work diversion. No action	2
			No action	12	
				No action - alternative charge (culpable and reckless conduct) used	4
				No action	8
			Duplicate	13	
				Duplicate - no action	4
				Rolled into another case	9
	Host an indoor social gathering in dwelling (5 people present in total)	40			
			Court	12	
				Summary complaint, PG	7
				Summary complaint, NG plea accepted, PG to other charge(s)	4

				Summary complaint, discontinued (wrong charge used)	1
		Direct measure	17		
				Fiscal fine (£125)	1
				Fiscal fine (£125 - together with other charge(s))	3
				Fiscal fine (£50)	5
				Fiscal fine (£50 - together with other charge(s))	1
				PF Warning Letter	7
		Diversion	1		
				Diversion to social work	1
		No action	6		
				No action - alternative charge (culpable and reckless conduct) used	1
				No action (time barred)	1
				No action	4
		Duplicate	4		
				Duplicate charge - no action	3
				Rolled into another case	1
	Host an indoor social gathering in dwelling (6 people "at least 6" present in total)	39			
		Court	13		
				Indicted. NG plea accepted, PG to other charge(s)	1
				Summary complaint, PG	2
				Summary complaint, NG plea accepted, PG to other charge(s)	3
				Summary complaint, discontinued. Petition. Rolled into another case	1
				Summary complaint, discontinued (insufficient evidence)	1
				Summary complaint, discontinued (accused vulnerable, further act disproportionate)	1
				Summary complaint, discontinued (remanded for another case)	1
				Petition, reduced to summary, NG plea accepted, PG to other charges	1
				Petition, not indicted on this charge	1
				Summary complaint (JP Court), PG	1
		Direct measure	12		
				Fiscal fine (£250 - together with other charge(s))	1
				Fiscal fine (£125 - together with other charge(s))	1
				Fiscal fine (£125 - together with other charge(s)). Untraced. Withdrawn. No further action.	1
				Fiscal fine (£125)	2
				Fiscal fine (£50)	7
		Diversion	2		
				Diversion to social work	1
				Failed diversion. PF Warning Letter	1
		No action	6		
				No action - alternative charge (culpable and reckless conduct) used	1
				No action (further action disproportionate)	1
				No action (marking delay)	1
				No action	3
		Duplicate	6		
				Duplicate - no action	1
				Rolled into another case	5
	Host an indoor social gathering in dwelling (7 people "at least 7" present in total)	32			
		Court	5		
				Summary complaint, PG	3
				Summary complaint, NG plea accepted, PG to other charge(s)	2
		Direct measure	18		
				Fiscal fine (£250 - together with other charge(s))	1
				Fiscal fine (£125)	4
				Fiscal fine (£50)	10
				PF Warning Letter	3
		Diversion	6		
				Diversion to social work	4
				Failed social work diversion. PF Warning Letter	1
				Failed diversion. No further action (serving prison sentence)	1
		No action	3		
				No action (insufficient evidence)	1
				No action	2
	Host an indoor social gathering in dwelling (8 people in total/"around 8" "at least 8" present in total)	27			
		Court	6		
				Summary complaint, NG plea accepted, PG to other charge(s)	4
				Summary complaint, discontinued (time bar)	1
				Summary complaint, discontinued (rolled into another case)	1
		Direct measure	15		
				Fiscal fine (£125)	6

				Fiscal fine (£50)	8
				PF Warning letter	1
			Diversion	1 Diversion to social work	1
			No action	5	
				No action - alternative charge (culpable and reckless conduct) used	3
				No action (diversion explored but not required)	1
				No action	1
	Host an indoor social gathering in dwelling (9 people "at least 9" present in total)	17			
			Court	4	
				Indicted. NG plea accepted, PG to other charge(s)	1
				Indicted. NG plea accepted.	1
				Summary complaint, NG plea accepted, PG to other charge(s)	2
			Direct measure	11	
				Fiscal fine (£175)	3
				Fiscal fine (£125)	4
				Fiscal fine (£50)	2
				PF Warning Letter	2
			Diversion	1 Marked for social work diversion. Mistakenly not actioned. No action.	1
			Duplicate	1 Rolled into another case	1
	Host an indoor social gathering in dwelling (10 people "around 10" "at least 10" present in total)	17			
			Court	3	
				Summary complaint, PG	1
				Summary complaint, charge withdrawn at trial (FNG)	1
				Summary complaint, discontinued (roll up)	1
			Direct measure	12	
				Fiscal fine (£250 - together with other charge(s))	1
				Fiscal fine (£125)	2
				Fiscal fine (£50)	7
				PF Warning Letter	2
			Diversion	2	
				Failed social work diversion. Fiscal fine (£50)	1
				Diversion to social work	1
	Host an indoor social gathering in dwelling (11 to 14 people present in total)	28			
			Court	5	
				Summary complaint, PG	3
				Summary complaint, NG plea accepted, PG to other charge(s)	1
				Petition, no further action	1
			Direct measure	19	
				Fiscal fine (£125)	1
				Fiscal fine (£50)	14
				Fiscal fine (£50 - together with other charge(s))	1
				PF Warning Letter	3
			No action	2	
				No action - alternative charge (culpable and reckless conduct) used	1
				No action	1
			Duplicate	2	
				Rolled into another case	2
	Host a party indoors at dwelling ("around 15" people to 19 people present in total)	19			
			Court	2	
				Summary complaint, PG	1
				Summary complaint, Found Not Guilty after trial	1
			Direct measure	17	
				Fiscal fine (£250), not paid. Summary complaint (JP Court). Discontinued (failed service)	1
				Fiscal fine (£175 - together with other charge(s))	2
				Fiscal fine (£125)	5
				Fiscal fine (£50)	4
				Fiscal fine (£30)	1
				PF Warning Letter	4
	Host a party indoors at dwelling ("around 20" people to "around 25" present in total)	25			
			Court	8	
				Summary complaint, PG	3
				Summary complaint, NG plea accepted, PG to other charge(s)	1
				Summary complaint, NG plea accepted (global plea)	1
				Summary complaint (JP Court), PG	1

				Summary complaint (JP Court), discontinued (age of offence)	2
		Direct measure	14		
				Fiscal fine (£250)	1
				Fiscal fine (£175)	3
				Fiscal fine (£125 - together with other charge(s). Untraced. Summary complaint (JP Court). Discontinued (failed service)	1
				Fiscal fine (£50)	3
				PF Warning Letter	6
		No action	1		
				No action - alternative charge (culpable and reckless conduct) used	1
		Duplicate	2		
				Rolled into another case	2
	Host a party indoors at dwelling (30 or more people present)	22			
		Court	1		
				Summary complaint, NG plea accepted, PG to other charges	1
		Direct measure	19		
				Fiscal fine (£400)	3
				Fiscal fine (£325)	1
				Fiscal fine (£250)	1
				Fiscal fine (£175)	2
				Fiscal fine (£175 - together with other charge(s))	1
				Fiscal fine (£125)	1
				Fiscal fine (£50)	8
				PF Warning Letter	2
		Diversion	2		
				Diversion to social work	1
				Failed diversion (not suitable as under 16), no further action	1
Host gathering outdoors in private dwelling					
	Host/attend outdoor gathering in garden at dwelling (excluding gatherings which were partly indoors)	13			
		Court	3		
				Summary complaint, NG plea accepted, PG to other charge(s)	1
				Summary complaint (JP Court), PG	1
				Summary complaint (JP Court), discontinued (no longer in public interest)	1
		Direct measure	10		
				Fiscal fine (£125)	1
				Fiscal fine (£125 - together with other charge)	1
				Fiscal fine (£50)	5
				Fiscal fine (£50 - together with other charge(s))	1
				PF Warning Letter	2
Gatherings indoors in private dwelling					
	Book holiday let and organise party host party at holiday home	10			
		Court	1		
				Summary complaint, NG plea accepted, PG to other charge(s)	1
		Direct measure	5		
				Fiscal fine (£400)	1
				Fiscal fine (£175)	2
				Fiscal fine (£125)	1
				Fiscal fine (£50)	1
		No action	4		
				No action (reporting delay)	2
				No action	2
	Attend indoor social gathering party at holiday rental accommodation	24			
		Court	2		
				Summary complaint, NG plea accepted, PG to other charges	2
		Direct measure	22		
				Fiscal fine (£325)	1
				Fiscal fine (£50)	4
				Fiscal fine (£50). Accused untraced. Withdrawn. No further action.	2
				PF Warning Letter	15
	Attend at enter another person's address (including uninvited)	90			
		Court	46		
				Indicted. PG	2
				Indicted, NG plea accepted, PG to other charge(s)	2
				Summary complaint, PG	13
				Summary complaint, NG plea accepted, PG to other charge(s)	18

				Summary complaint, discontinued (accused deceased)	2
				Summary complaint, discontinued (witness issues)	1
				Summary complaint, discontinued (not criminal)	1
				Summary complaint, discontinued (failed service)	1
				Summary complaint (JP Court), discontinued (co-accused deceased)	1
				Petition, not indicted on this charge	4
				Petition, not further action. Referred to Children's Reporter	1
		Diversion	3		
				Diversion to social work	1
				Referred to Children's Reporter	2
		Direct measure	21		
				Combined FF (£50) and compensation offer	1
				Fiscal fine (£400 - together with other charge(s))	1
				Fiscal fine (£250 - together with other charge(s))	1
				Fiscal fine (£175)	3
				Fiscal fine (£175 - together with other charge(s))	1
				Fiscal fine (£125)	2
				Fiscal fine (£125 - together with other charges)	2
				Fiscal fine (£50)	8
				Fiscal fine (£30)	1
				PF Warning Letter	1
		No action	17		
				No action (reporting delay)	1
				No action (further action disproportionate)	1
				No action	15
		Duplicate	3		
				Rolled into another case	3
	Attend social gathering of 3 or more people indoors at private dwelling	500			
		Court	149		
				Indicted, PG	3
				Indicted. NG plea accepted, PG to other charge(s)	1
				Summary complaint. Found Guilty after trial	2
				Summary complaint, PG	43
				Summary complaint, NG plea accepted, PG to other charge(s)	60
				Summary complaint, NG plea accepted (plea agreement across multiple cases)	2
				Summary complaint, NG plea accepted (co-accused PG)	4
				Summary complaint. Not Proven verdict after trial	1
				Summary complaint, "dismissed" (not clear if withdrawn or submission upheld)	1
				Summary complaint, discontinued (accused PG to other matters)	1
				Summary complaint, discontinued (co-accused PG)	3
				Summary complaint, discontinued (accused deceased)	4
				Summary complaint, discontinued (accused in prison)	2
				Summary complaint, discontinued (failed service)	3
				Summary complaint, discontinued (mitigating circumstances)	2
				Summary complaint, discontinued	2
				Summary complaint (JP Court), PG	2
				Summary complaint (JP Court), PG. Granted absolute discharge (not convicted)	1
				Summary complaint (JP Court), PG. Withdrawn (legal advice), NG plea accepted, PG other charge(s)	1
				Summary complaint (JP Court), NG plea accepted, PG to other charge(s)	2
				Summary complaint (JP Court), discontinued (mitigating circumstances)	1
				Summary complaint (JP Court), discontinued (age of offence)	1
				Summary complaint (JP Court), discontinued (failed service)	1
				Petition, not indicted on this charge (PG by s76 indictment)	1
				Petition, not indicted on this charge	4
				Petition, no further action	1
		Direct measure	214		
				Fiscal fine (£500)	1
				Fiscal fine (£400 - together with other charge(s))	2
				Fiscal fine (£325 - together with other charge(s))	1
				Fiscal fine (£325 - together with other charge(s))	2
				Fiscal fine (£250)	3
				Fiscal fine (£250 - together with other charge(s))	3
				Fiscal fine (£175)	9
				Fiscal fine (£175 - together with other charge(s))	6
				Fiscal fine (£100). Withdrawn (already accepted FPN)	6

				Fiscal fine (£100). Withdrawn (already accepted FPN)	1
				Fiscal fine (£125)	38
				Fiscal fine (£125 - together with other charge(s))	15
				Fiscal fine (£125). Withdrawn. No further action	1
				Fiscal fine (£50)	88
				Fiscal fine (£50 - together with other charge(s))	1
				Fiscal fine (£50). Withdrawn (remanded for another case). No action.	1
				Fiscal fine (£50). Withdrawn (untraced). No action	4
				PF Warning Letter	37
			Diversion	47	
				Diversion to social work	29
				Failed social work diversion. Summary complaint (JP Court), PG	1
				Failed social work diversion. Summary complaint, NG plea accepted, PG to other charge(s)	1
				Failed social work diversion. PF Warning Letter	2
				Failed social work diversion, no further action	7
				Referred to Children's Reporter	7
			No action	62	
				No action (charge under correct regulations added)	8
				No action (FPN already issued and not challenged)	3
				No action (reporting delay)	6
				No action (insufficient evidence on more serious charge)	3
				No action (insufficient evidence)	1
				No action (mitigating circumstances)	1
				No action (further action disproportionate)	4
				No action (time bar)	1
				No action	35
			Duplicate/other	28	
				Duplicate charge - no action	13
				Rolled into another case, charges merged	3
				Rolled into another case	12
Licensed premises/hospitality					
	Licensee hosting "lock in" party at licensed premises	12			
			Court	5	
				Summary complaint, discontinued (acceptable explanation offered)	1
				Summary complaint, discontinued (age of offence, witnesses not available)	1
				Summary complaint, discontinued (wrong requirement specified)	1
				Summary complaint, discontinued	2
			Direct measure	6	
				Fiscal fine (£500 - together with other charges)	1
				FF (£250). Refused. Summary complaint (JP), discontinued (acceptable explanation offered)	1
				Fiscal fine (£175)	1
				Fiscal fine (£125 - together with other charge(s))	1
				Fiscal fine (£100)	1
				Fiscal fine (£50)	1
			No action	1	
				No action - alternative charge (culpable and reckless conduct) used	1
	Other restrictions on hospitality licensed premises - serving alcohol or food curfew	11			
			Court	4	
				Summary complaint, PG	1
				Summary complaint, NG plea accepted, PG to other charges	1
				Summary complaint, discontinued (premises since closed, licence relinquished)	1
				Summary complaint, discontinued (no longer in public interest)	1
			Direct measure	3	
				Fiscal fine (£50)	2
				PF Warning Letter	1
			No action	4	
				No action (insufficient evidence that accused acting in relevant capacity)	4

APPENDIX 8 – MODIFIER CHARGES – CULPABLE AND RECKLESS CONDUCT

Charge	No.	Circumstances	No.	Initial marking type	No.	Outcome	No.
Culpable and reckless conduct	481						
		Travel from local area/enter Scotland	<8				
				Not reportable		n/a	
		Organise a protest in outdoor public place	<8				
				Not reportable		n/a	
		Organise gathering in indoor public place (including pub "lock-ins" and "raves" in commercial premises)	10				
				Court	5		
						Indicted, PG	1
						Indicted, NG plea accepted (co-accused PG)	1
						Summary complaint, discontinued (insufficient evidence)	2
						Petition, reduced to summary (changed to offence under regulations)	1
				Direct measure	3		
						Fiscal fine (£400)	1
						Fiscal fine (£325)	1
						PF Warning Letter	1
				No action	2		
						No action (insufficient evidence)	1
						No action (not criminal)	1
		Organise party at holiday let (8 people to "around 200" in attendance)	10				
				Court	4		
						Indicted. Plea in bar of trial sustained.	1
						Indicted, NG plea accepted (to use accused as witness against co-accused)	1
						Summary complaint, PG	1
						Summary complaint, discontinued	1
				Direct measure	2		
						Fiscal fine (£125)	1
						PF Warning Letter	1
				No action	4		
						No action (insufficient evidence)	4
		Attend party at dwelling/holiday let ("more than 20" to "more than 30" people present)	39				
				Court	5		
						Indicted, PG	5
				No action	34		
						No action	34
		Repeatedly host social gatherings at private dwelling	<8				
				Not reportable		n/a	
		Allow one other person into your address - indoor gatherings prohibited	<8				
				Not reportable		n/a	
		Host social gathering in dwelling (more than 2 people present) - during first "lockdown"	37				
				Court	8		
						Summary complaint, PG	1
						Summary complaint, found Not Guilty after trial	1
						Summary complaint, discontinued (accused health)	3
						Summary complaint, discontinued (no longer in public interest)	2
						Summary complaint, discontinued	1
				Direct measure	13		
						Fiscal fine (£250)	1
						Fiscal fine (£175)	1
						Fiscal fine (£175 - together with other charge(s))	1
						Fiscal fine (£125 - together with other charge(s))	2
						Fiscal fine (£50)	6
						PF Warning Letter	2
				No action	10		
						No action - alternative charge used	1
						No action (further action disproportionate)	1
						No action (insufficient evidence)	7
						No action	1
				Duplicate	6		
						Rolled into another case	6
		Host indoor social gathering in dwelling (number not specified) - indoor gatherings in dwellings prohibited	<8				

			Not reportable	n/a	
		Host social gathering indoors at dwelling (3 to 5 people present in total) - indoor gatherings in dwellings prohibited	21		
			Court	5	
				Summary complaint, PG	2
				Summary complaint, NG plea accepted, PG to other charge(s)	1
				Summary complaint, discontinued	1
				Petition, reduced to summary (prosecuted as offence under regulations)	1
			Direct measure	2	
				Fiscal fine (£125)	1
				Fiscal fine (£125 - together with other charge(s))	1
			No action	14	
				No action - alternative charge (Covid regulations) used	2
				No action (age of offence)	1
				No action (further action disproportionate)	1
				No action (insufficient evidence)	5
				No action (not criminal)	3
				No action	2
		Host social gatherings indoors at dwelling (6 to 9 people present in total) - indoor gatherings in dwellings prohibited	31		
			Court	10	
				Summary complaint, PG	4
				Summary complaint, NG plea accepted, PG to other charge(s)	3
				Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
				Summary complaint, discontinued (delay in execution of warrant)	1
				Summary complaint, discontinued	1
			Direct measure	5	
				Fiscal fine (£125)	3
				PF Warning Letter	2
			No action	14	
				No action - alternative charge (Covid regulations) used	1
				No action (not criminal)	1
				No action (insufficient evidence)	7
				No action (evidential issues, mitigating circumstances)	1
				No action (further action disproportionate)	1
				No action	3
			Duplicate	2	
				Rolled into another case	2
		Host party at dwelling ("around 10" to 19 people present in total) - indoor gatherings in dwellings prohibited	26		
			Court	7	
				Summary complaint, PG	2
				Summary complaint, PG to alternative charge (Covid regulations)	1
				Summary complaint, NG plea accepted, PG to other charge(s)	1
				Summary complaint, discontinued (no longer in public interest)	1
				Summary complaint, discontinued	1
				Petition, not indicted (insufficient evidence)	1
			Direct measure	6	
				Fiscal fine (£250)	2
				Fiscal fine (£125)	4
			No action	13	
				No action (insufficient evidence)	7
				No action (not criminal)	1
				No action	5
		Host party indoors at dwelling ("around 20" to "around 50" present in total) - indoor gatherings in dwellings prohibited	12		
			Court	3	
				Summary complaint, discontinued (no longer in public interest)	1
				Summary complaint, discontinued (delay in execution of warrant)	1
				Petition, not indicted (insufficient evidence)	1
			Direct measure	2	
				Fiscal fine (£175)	1
				Fiscal fine (£50)	1
			No action	7	
				No action (insufficient evidence)	7

	Host/attend social gathering in dwelling in excess of maximum permitted numbers	10				
			Court	6		
					Summary complaint, PG	1
					Summary complaint. No case to answer submission sustained at trial (found Not Guilty)	5
			Diversion	1		
					Diversion to social work	1
			No action	2		
					No action (further action disproportionate)	2
			Duplicate	1		
					Rolled into another case	1
	Host a party where at least one person had Covid symptoms or host meant to be self-isolating	<8				
			Not reportable	n/a		
	Host social gathering outdoors at dwelling	<8				
			Not reportable	n/a		
	Fail to self-isolate after testing positive	30				
			Court	18		
					Indicted. PG	4
					Indicted. NG plea accepted, PG to other charge(s)	2
					Indicted. Discontinued (accused health)	1
					Summary complaint, PG	1
					Summary complaint, NG plea accepted, PG to other charge(s)	1
					Summary complaint, discontinued (failed service)	1
					Summary complaint, discontinued (delay in proceedings concluding, no longer in public interest)	1
					Petition, reduced to summary. Discontinued (witness issues)	1
					Petition, reduced to summary. Discontinued (mitigating circumstances)	1
					Petition, no further action (PG to other charges by s76 indictment)	1
					Petition, no further action (exculpatory evidence)	1
					Petition, no further action (mitigating circumstances)	1
					Petition, no further action (insufficient evidence)	1
					Petition, rolled into another case	1
			Direct measure	2		
					PF Warning Letter	2
			Diversion	2		
					Referred to Children's Reporter	2
			No action	4		
					No action (insufficient evidence)	1
					No action	3
			Duplicate/other	4		
					Rolled into another case, charge merged	1
					Rolled into another case	3
	Fail to self-isolate in other circumstances (close contact tested positive/while exhibiting symptoms)	11				
			Court	7		
					Indicted. PG	1
					Indicted. Discontinued (exculpatory evidence)	1
					Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
					Summary complaint, discontinued (evidential issues, no longer in public interest)	2
					Petition, not indicted on this charge (insufficient evidence)	1
					Petition, not indicted on this charge	1
			Diversion	2		
					Referred to Children's Reporter	2
			No action	2		
					No action (mitigating circumstances)	1
					No action (insufficient evidence)	1
	Fail to self-isolate while claiming to have tested positive/have Covid symptoms/be awaiting a test	23				
			Court	15		
					Indicted, NG plea accepted (no evidence that had actually Covid), PG to other charge(s)	1
					Indicted. NG plea accepted (evidential issues)	1
					Summary complaint, PG	1
					Summary complaint. NG plea accepted, PG to other charge(s)	3
					Summary complaint. No case to answer submission sustained (Found Not Guilty)	1
					Summary complaint, withdrawn at trial (issues with other charges) (Found Not Guilty)	1

					Summary complaint, discontinued (witness issues, mitigating circumstances)	1
					Summary complaint, discontinued	1
					Petition, no further action - alternative charge (s38 CJLSA 2010) used	1
					Petition, no further action (insufficient evidence)	3
					Petition, no further action	1
			No action	7		
					No action - alternative charge (s38 CJLSA 2010) used	1
					No action (insufficient evidence)	3
					No action	3
			Duplicate	1		
					Rolled into another case	1
		Fail to self-isolate and fail to disclose (or falsely deny) having Covid/symptoms to police officers/and others	13			
			Court	9		
					Indicted, PG	2
					Indicted. PG under deletion (not specified)	1
					Indicted. NG plea accepted, PG to other charge(s)	1
					Summary complaint, discontinued (accused deceased)	1
					Petition, reduced to summary. NG plea accepted, PG to other charge(s)	1
					Petition, no further action	1
					Petition, no further action (insufficient evidence)	2
			No action	2		
					No action (insufficient evidence)	1
					No action	1
			Duplicate	2		
					Rolled into another case	2
		Falsely deny having Covid/symptoms to police officers	15			
			Court	8		
					Indicted. PG	1
					Summary complaint, PG	1
					Summary complaint, NG plea accepted (plea agreement across multiple cases)	1
					Summary complaint, discontinued (accused deceased)	1
					Petition, no further action (accused deceased)	1
					Petition, no further action - alternative charge (Wasting Police Time) used	1
					Petition, no further action (exculpatory evidence)	2
			No action	6		
					No action - alternative charge (s38 CJLSA 2010) used	1
					No action (mitigating circumstances)	1
					No action (insufficient evidence)	1
					No action	3
			Duplicate	1		
					Rolled into another case	1
		Fail to disclose to police officers/others that tested positive/had symptoms/had close contact with infected person	10			
			Court	8		
					Indicted, PG	1
					Pettion. PG by s76 indictment	2
					Summary complaint. PG to alternative charge (BOTP) by falsely claiming to have Covid	1
					Summary complaint, NG plea accepted, PG to other charge(s)	1
					Summary complaint, discontinued	1
					Petition, not indicted on this charge (PG by s76 to others)	1
					Petition, no further action (insufficient evidence)	1
			No action	2		
					No action (insufficient evidence)	1
					No action - alternative charge (s38 CJLSA 2010) used	1
		Spit (or attempt to spit)/cough towards police officer(s)/police civilian staff member	27			
			Court	15		
					Indicted. Found Guilty after trial	1
					Indicted. PG	2
					Indicted. PG to amended charge ("cough in vicinity of")	1
					Indicted. NG plea accepted - incorporated into other charge (s38 CJLSA 2010)	2
					Indicted. NG plea accepted, PG to other charge(s)	3
					Indicted. Not Proven verdict after trial	1

					Summary complaint, PG	3
					Petition. No further action - alternative charge (s38 CJLSA 2010) used	1
					Petition. No further action - alternative charges (assault) used	1
			No action	10		
					No action - alternative charges (s38 CJLSA 2010 and assault) used	1
					No action - alternative charge(s) (assault) used	8
					No action (accused health, age of offence)	1
			Duplicate	2		
					Rolled into another case	2
		Spit (or attempt to)/cough at police officers/custody staff while had (or claiming to have) Covid/symptoms/contact with infected person	27			
			Court	18		
					Indicted. PG	7
					Petition. PG by s76 indictment	2
					Petition, indicted on this as an alternative charge. PG to amended charge (BOTP)	1
					Indicted. Not Proven verdict after trial	2
					Summary complaint. PG.	2
					Petition. Rolled into another case	1
					Petition, no further action - alternative charge (s38 CJLSA 2010) used	1
					Petition, no further action - alternative charge(s) (assault) used	2
			No action	7		
					No action - alternative charges (assault and s38 CJLSA 2010) used	2
					No action - alternative charge(s) (assault) used	3
					No action - alternative charge (s38 CJLSA 2010) used	1
					No action - alternative charge (police assault) used	1
			Duplicate	2		
					Rolled into another case	2
		Spit/cough while near to police officers - including while had (or claiming to have) Covid/symptoms/contact with infected person	13			
			Court	12		
					Indicted. PG	5
					Indicted. NG plea accepted - incorporated into other charge to which PG	2
					Indicted. NG plea accepted, PG to other charge(s)	1
					Summary complaint, PG	1
					Summary complaint, NG plea accepted, PG to other charge(s)	1
					Petition, reduced to summary, found Not Guilty after trial	1
					Petition, reduced to summary (alternative charge - resisting arrest - used)	1
			No action	1		
					No action	1