

Justice Committee

House of Commons London SW1A 0AA
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Website www.parliament.uk/justicecttee

The Rt Hon Suella Braverman QC MP

Attorney General

102 Petty France

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9 June 2020

Dear Attorney General,

Thank you for your letter dated 3 June setting out the purpose of the Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2020 ('the Prosecutions of Offences Order'). The role of the Crown Prosecution Service ('the CPS') in supervising the prosecution of offences under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and the Health Protection (Coronavirus, Restrictions) (Wales) Regulations 2020 ("the Regulations") is of particular interest to the Committee.

Your letter sets out that the Prosecution of Offences Order is designed to ensure 'the efficient prosecution of offences' under the Regulations and the Committee recognises that this is a legitimate aim. However, the Committee is nonetheless concerned that this change could increase the risk of individuals being wrongly convicted and suffering injustice.

The Prosecution of Offences Order will 'streamline' the process of prosecuting cases under the Regulations by removing the CPS's role where individuals plead guilty. Focusing the limited resources of the CPS on contested cases is a sensible approach, but in the exceptional circumstances of these Regulations it is arguable that removing the CPS's independent oversight and legal expertise from the process is inappropriate.

The Prosecution of Offences Order places offences under the Regulations in the same category as a number of road traffic offences (set out in [The Schedule to the Prosecution of Offences Act 1985 \(Specified Proceedings\) Order 1999](#)) (the Schedule'). The offences in the Regulations to protect public health by restricting the freedoms of all individuals in England are arguably fundamentally different in character from the other offences in the Schedule. There have been a number of high profile examples which have highlighted the difficulty of establishing the meaning of a 'reasonable excuse' under regulation 6 (1) of the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#). By contrast, questions of liability in relation to the traffic offences listed in the Schedule are more straightforward.

On 21 May 2020, the Director of Public Prosecutions ('the DPP'), Max Hill QC, told the Justice Committee that a review of prosecutions under the Regulations had revealed that of the 187 cases charged and brought to court, 12 were incorrectly charged. While that is a relatively small

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percentage, the results of the review highlight the value of the CPS's supervision of prosecutions under the Regulations. When we asked the DPP about the potential that the Police may have made errors when issuing fixed penalty notices, Max Hill QC said:

"I cannot give you an absolute prediction that there will be no errors or failures under that part of the system. What I would say is that this activity, again, has been generated by what

Parliament did at such speed in the very early weeks of lockdown. The focus that has been applied at the most senior policing levels nationwide on the Act and on the regulations should help, and I am confident it will. Is it going to drive errors down to zero? That is impossible for me to predict."

The Justice Committee also recognise the difficult challenge facing police forces in enforcing the lockdown regulations. However, as the DPP's evidence suggests, there is undeniably a risk that some of the fixed penalty notices will have been wrongly issued.

We recognise that the Prosecutions of Offences Order would only apply to cases where the individual chooses to plead guilty. However, an individual may choose to plead guilty for any number of reasons. An admission of guilt does not necessarily lessen the likelihood that the fixed penalty notice will have been wrongly issued. The Committee would be interested to know the number of cases that the Prosecutions of Offences Order is likely to affect. If the numbers are relatively small, then we might suggest that the potential benefit is negligible. If this change will affect a large number of cases, then it will be important to monitor and review those cases in light of any issues identified in contested cases.

We would be grateful for your response to these points.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Neill', with a stylized flourish at the end.

Sir Robert Neill MP
Chair
Justice Committee