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27th September 2023

Mr C. Randall
Interim Chief Executive (IOM Gov)
Cabinet Office
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Bucks Road
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OPEN CORRESPONDENCE

Dear Mr Randall

Re: Coronavirus Regulations - Custody & Application to Children

We have been contacted by a number of persons who have made contributions to the IOM *Independent Covid Review* chaired by Kate Brunner KC.

The specific area of concern relates to the nature and formulation of Coronavirus Regulations.

As you will be aware, the IOM Government declared a State of Emergency on 16th March 2020.

Shortly after this, the IOM Government passed a number of Coronavirus Regulations as secondary legislation under the Emergency Powers Act 1936. For example, the Prohibitions on Movement and the Prohibitions on Gatherings, both of which came into operation on 27th March 2020.

The Manx Regulations mirrored almost identical Coronavirus Regulations in the UK, save for two very important differences:-

A. Children

The UK Coronavirus Regulations were only applicable to persons aged *18 and over*. In significant contrast, Manx Coronavirus Regulations also applied to children (persons aged 12 and over).



B. Custody

The UK Coronavirus Regulations were punishable by way of a Fixed Penalty Notice. This was typically a £100.00 on-the-spot fine. Breach of a Regulation was not therefore a recordable criminal conviction (for example, Boris Johnson, then UK Prime Minister, received a £100.00 fixed penalty for an illegal party gathering in Downing Street, London).

In sharp contrast, breach of Manx Coronavirus Regulations was punishable by way of a fine (not exceeding £10,000.00) or 3 months custody.

Breach of Manx Coronavirus Regulations was a criminal offence.

The following is of particular concern:

- i) **248** persons were arrested on the Isle of Man for breach of Coronavirus Regulations (whereas no person was arrested in the UK).
- ii) **22** Juvenile arrests (of persons aged between 12 and 16) were made on the Isle of Man for breach of Coronavirus Regulations (in respect of 14 different children, some of whom were arrested more than once). No juveniles were arrested in the UK.
- iii) **70** persons received custodial sentences for breach of Coronavirus Regulations on the Isle of Man (whereas no person was jailed in the UK).
- iv) **2** custodial sentences were handed down by the Juvenile Court for breach of Coronavirus Regulations on the Isle of Man (which resulted in a child being sent to the Cronk Sollysh Secure Unit, White Hoe, Braddan). No juveniles received a custodial sentence in the UK.

We note that UK Coronavirus Regulations preceded in time the introduction of Manx Coronavirus Regulations and that the Manx Regulations seem to have been in effect adopted or cut and pasted from the UK Regulations.

The specific decisions to insert custody and make the Regulations applicable to children therefore appear to be deliberate and calculated choices.

In terms of the current Independent Covid Review, what we require to sensibly establish is as follows:-

Questions to answer

1. When were draft Coronavirus Regulations received from the UK by Isle of Man Government?



(3)

2. Who proposed or which particular persons had the controversial idea to make Manx Coronavirus Regulations applicable to children (rather than persons aged 18 or over)?
3. Similarly, who proposed or which particular persons made the significant suggestion that Manx Coronavirus Regulations be punishable by way of custody?
 1. Was it the then Chief Minister Mr Howard Quayle?
 2. Was it the then Attorney General Mr John Quinn?
 3. Was it the then Solicitor General Mr Walter Wannenburg?
 4. Was it the then Minister for Home Affairs Mr Graham Cregeen?
 5. Was it the then CEO of the Department of Home Affairs Mr Dan Davies?
6. What were the specific reasons or justification advanced for making the Manx Regulations applicable to children and breach punishable by jail?
7. What were the views of Mr Alfred Cannan (then Treasury Minister) or Dr Alex Allinson (then Education Minister) or Mr David Ashford (then Health Minister)? In particular, did any of such individuals oppose making the Coronavirus Regulations applicable to children or punishable by custody?
8. Were the views of Manx Care (which has overall responsibility for the running of the Secure Unit for juvenile offenders) or the Police canvassed on the issue of applying Manx Coronavirus Regulations to children?
9. Why was custody deemed necessary and appropriate, given that largely identical Regulations throughout England, Scotland, Wales and Northern Ireland were only punishable by on-the-spot fines?
10. Was an assessment carried out in relation to compatibility of such Manx Regulations with the European Convention on Human Rights, particularly with regard to proportionality?
11. Was an assessment carried out in relation to compatibility with the Equality Act 2017, particularly with regard to indirect discrimination?
12. Were the draft Coronavirus Regulations approved by the whole Council of Ministers and if so, on what date?
13. Alternatively, were the Regulations authorised by just the Chief Minister and/or Minister for Home Affairs?



(4)

14. Did any MHK or MLC raise concerns about making the Coronavirus Regulations applicable to children and breach punishable by custody? If so, who?
15. Were the Manx Regulations sent for approval to the UK Ministry of Justice before coming into force on the Island?
16. What advice did the Council of Ministers receive from the Attorney General or Solicitor General in respect of the Coronavirus Regulations being applicable to children and breach of Regulations being punishable by custody?
17. What advice did the then Chief Secretary, Mr Will Greenhow, give regarding the application of the Coronavirus Regulations to children?
18. Who ultimately instructed draftsmen at the Attorney General's Chambers to amend the previously published UK Regulations?
19. Why was secondary legislation not initially passed (at the same time the Coronavirus Regulations were first introduced) to allow breach of the Regulations to be punishable by Fixed Penalty Notices (on-the-spot fine)?
20. Given that UK Coronavirus Regulations were from the start punishable only by way of a Fixed Penalty Notice, why was there a delay in the Isle of Man until the end of April 2020 before the necessary secondary legislation had been passed allowing for Fixed Penalty Notices to be introduced?
21. When were the relevant Fixed Penalty Notices actually printed on paper and available for day to day use by the IOM Constabulary?
22. Why did new Coronavirus Regulations passed as late as 2021 (during the second and third lockdowns of January and March 2021 respectively) continue to be applicable to children and punishable by custody, despite knowing at that stage so many persons had already been arrested and jailed on the Island?

Written Documents Requested

In relation to the above questions, we respectfully request that you provide the following disclosure:-

- a) Minutes of all meetings of the Council of Ministers in March 2020 at which the nature and formulation of Coronavirus Regulations was discussed.



(5)

- b) Minutes of meetings between the Chief Minister, Attorney General and the Minister for Department of Home Affairs at which the nature and formulation of Coronavirus Regulations was discussed.
- c) Emails between the Chief Minister, Attorney General and Minister for Department for Home Affairs in which it was discussed making Coronavirus Regulations applicable to children and breach punishable by custody.
- d) Emails or written advice given by the Attorney General in respect of the compatibility of Manx Coronavirus Regulations with the European Convention on Human Rights.
- e) Emails or written advice given by the Chief Secretary in relation to the compatibility of such Regulations with the Equality Act.
- f) Emails or briefing note to MHK's from Chief Minister or Department of Home Affairs on the compatibility of Manx Coronavirus Regulations to the ECHR and Equality Act, particularly in relation to proportionality and discrimination.

Please may we hear from you by **Friday 13th October 2023** in respect of the above matters, which self-evidently contain proper public accountability considerations, as well as being pertinent to the *Independent Covid Review*.

Thank you for your assistance.

Yours sincerely

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