

SG Pandemic Flu Preparedness Board
5th June 2019
Meeting 8
Meeting Papers

Papers 8.1 – 8.5 are collated in the order of the agenda.

The purpose of these papers is for note and to facilitate discussion to agree the next steps in for the Pandemic Flu Preparedness Board/ project.

SG Pandemic Flu Readiness Board
MEETING 8
15:00 -16:30
5th June 2019
St Andrew's House
AGENDA

	Item	Comments
1.	Welcome and Introductions	
2.	Minutes and actions from last meeting November 2018	Paper 8.1
3.	Cross-Government PFRB Update - Handling/Engagement Strategy Summary	Paper 8.2
4.	SG Project Workstream Updates <ul style="list-style-type: none"> o Work stream summary o Latest Bill position 	Paper 8.3
5.	Project Governance <ul style="list-style-type: none"> o Plan / Timetable o Risk Register 	Paper 8.4a Paper 8.4b
6.	SG Project Position Paper	Paper 8.5
7.	Ministerial Engagement	
8.	AOB	
9.	Date of Next Meeting	
10.	Summary / Close / Thanks	

Paper 8.1 Pandemic Flu Preparedness Board Minutes and Actions from previous meeting.

Purpose: Previous Actions from the November PFPB meeting

Action: For awareness

Minutes from the previous PFPB meeting in November 2018

Action	Discussion / Context	Agreed action	Owner	Due	Update	RAG
1.	Project Governance and Risk Register Discussion of the main project plan took place, which highlighted the key milestones and the revised delivery dates for future/outstanding work.	Project manager to draft progress report on the work achieved and the work to be taken forward for the DFM before the Post Cab Presentation on 8 th January	PT	19/12/18	Post cabinet presentation was cancelled – PT awaiting to rearrange. Rearranged for 24th September 2019	G
2.	Project Governance and Risk Register PT expressed that a lot of the resources have been diverted to Brexit related work both within SG and UKG, and this has significantly delayed the delivery of key milestones. Board reiterated that pan flu is still the top named risk regardless of the immediate risk of Britain's Exit from the EU.	Include any other possible resilience incidents that may affect the project and/or a pandemic response on the project risk register.	PT	30/11/18	Completed. See papers 8.3 A and B.	G
3.	Future work – Exercising and Testing. Additionally the board questioned whether an SG ministerial table top exercise would be beneficial to test the flexibilities created	PT to scope and liaise with resilience planners the appetite for a SG table top exercise, and produce table/paper with findings	PT	Ongoing	Discussions with UKG and DA. Other health related exercises currently planned. Liaising with SGoRR.	A
4.	Future work – Exercising and Testing. Board also discussed the future of work streams 3 and 4 (Excess Deaths and Sector Resilience). PT and the Board agreed that any remaining work comes under normal business.	Work stream 3 and 4 to be signed off and removed from the program work in the future.	WSL	22/01/18	Completed: Workstreams 3 and 4 are now signed off and remaining work is now under normal business.	G

Action	Discussion / Context	Agreed action	Owner	Due	Update	RAG
5.	<p>UKG meeting and 4 nation ministerial meeting. PT debrief the board on the 4th October meeting with the UKG. No significant concerns were raised.</p> <p>PT reminded the board that they have questioned the UKG on the need for a four nation ministerial meeting to take place, and that they had brought this to attention during the meeting.</p> <p>Board discussed whether there was an appetite from the Cab Sec for Health for a four nation meeting on Health and Social Care/Pan Flu related issues.</p>	PT to follow up on meeting with Cab Sec for Health to scope her appetite for such a meeting to take place.	PT	03/12/18	<p>Ongoing discussions.</p> <p>Pandemic flu needs to be discussed as part of next update to ministers.</p>	A
6.	<p>Workstream Updates and One year assessments Board member welcomed the format of both the workstream summary and the workstream one year assessments.</p>	No actions to be taken forward from these papers.	PT		Completed.	G
7.	<p>Legislation Workstream Board agreed need to extend project/workstream beyond the December deadlines and complete once legal resource is available.</p>	PT/Chair to liaise with UKG to advise on this delay in meeting deadlines.	PT / Chair	30/11/18	<p>UKG have been made aware of the situation in SG. PT continuing liaise with policy teams and UKG to move work forward.</p> <p>11/01/19 : Significant issues with legal resource remain.</p> <p>30/05/19 : SG taking forward three clauses. UKG have been made aware of timescales for completion.</p>	A

Action	Discussion / Context	Agreed action	Owner	Due	Update	RAG
8.	Legislation Workstream PT drew attention to the lack of stakeholder engagement for legislative changes – which is casting doubts as to whether the proposed changes are what is required to create the desired flexibilities	Scope options for future stakeholder events/ SG handling strategy to align with UKG stakeholder handling strategy	PT / Chair	30/11/18	Final draft of UKG Handling Plan shared (see agenda item 3 for summary)	
9.	Legislation Workstream Powers to dis-apply legislation were discussed as an potential approach to moving the legislative workstream forward.	PT to contact SGLD to scope whether creation of such powers is possible/favourable, and to provide a written update to board members	Name Redacted	22/11/18	15/11/18: PT contacted SGLD and discussed and confirmed that legislation for power to dis-apply – did not make for a more streamlined process over drafting individual clauses.	G
10.	AOB Future of the PFP governance board.	Board agreed to continue meeting after December 2018, and further discussion at next meeting.	PFPB	22/01/18	15/11/18: Discussion following Post Cab Presentation Update: For discussion on 5th June	A
11.	Next meeting	Next Meeting January 22 nd 2019	PT to arrange	22/01/18	Cancelled and rescheduled. Meeting arranged for June 5th	G

Paper 8.2 UK Government Engagement and Handling Strategy Summary

Purpose : Update on the UK Government Engagement and Handling Strategy

Summary :

- This four nation high-level stakeholder engagement and handling plan outlines how UK Government, in conjunction with DAs, and led by the Department of Health and Social Care (DHSC) will conduct engagement in the period leading up to introduction of the bill through to its eventual sun setting. It also considers key handling considerations. Concurrently it will be necessary for the DAs to engage key stakeholders in Scotland, Wales and Northern Ireland respectively so as to facilitate the passage of Legislative Consent Motions for the devolved provisions in the Bill and to provide reassurance to key stakeholders in those parts of the UK.
- Individual DAs will have responsibility for this work, but will be supported as appropriate by DHSC and other UK departments. Fuller handling strategies will need to be developed prior to the Bill's introduction which will reflect the make-up of the UK Parliament and of the devolved legislatures at the time.
- Handling plan identifies key stakeholders for pre pandemic, pandemic bill enactment and post – pandemic. As well as key objectives and activities for each stage.

Action : To note.

Paper 8.3 Scottish Government Workstream Update Summary

Purpose: Further summary updates from the remaining workstreams: Health and Social Care, Legislation, Communications and SG Preparedness.

Action: For awareness and decision to be made by PFP Board on signing off workstream 6 – SG Preparedness to be taken under normal business.

Scottish Government Workstream Updates Summary: November 2018 – May 2019

Health and Social Care : Update April/May 2019

- Further work on pan flu operational guidance for health & social care in Scotland had been paused due to internal pressures and anticipation of UK Pan Flu Strategy review (see below) – now being progressed. Draft to be shared with pandemic flu contacts at Boards in June 2019, the Board pan flu co-ordinators group is being convened to consider the guidance
- UK-wide Pandemic Flu Strategy – had been due for review by Spring 2019 and would naturally inform the operational guidance for Scotland. However, work paused at UKG level and timescales for progressing work on Strategy unclear
- UKG work on finalising/disseminating options for response in the adult social care and community health care sectors also paused – will help to inform future iterations of Scottish operational guidance

Communications : Update April/May 2019

- SG Comms Activation/Mobilisation Toolkit has been finalised and agreed across SG Comms and Resilience. This also formalises the roles and responsibilities of a national Scottish Government comms cell, and the priorities for SG Comms which would form the basis of initial Ministerial advice

Additional updates for PFPB awareness?

- Engage with Scottish Public Communications Groups to raise awareness of the structures and key officials during an outbreak this will be progressed through 2019. However this and the remaining objectives are hampered in their progress by a lack of clarity of information from UK Government as to how, if and when they plan to finalise the Communications Plan, which has yet to go to Ministers, and what further work they envisage taking place beyond that.
- Now that the Activation Plan is concluded, it is likely that outstanding work could continue to progress without the overarching Board, but there is a clear risk of having no over-arching co-ordination structure across the various workstreams.

Legislation : Update April/May 2019

See annex A - Table for latest position of the draft Bill

Additional updates for PFPB awareness?

- SG going forward with 3 clauses to be included in the UK Bill
- Delays due to getting policy teams to sign up fully. Significant pushback due to policy not being able to engage with stakeholders
- Scottish legislation is more robust than other DAs. Therefore risk to Scotland being at a disadvantage if pandemic outbreak occurs is low.

Latest UK Government Bill Position

- UKG have confirmed that all their clauses have been finalised and are awaiting confirmation from OPC on when a final draft will be available – they are hoping by mid-June
- UKG mentioned they are planning on presenting an outline to ministers
- LCM paper – Parliamentary liaison colleagues were included in the circulation of latest version of this paper on 28th May.
- Explanatory notes required in addition to clauses.
- Additional notes on why DAs have discounted areas of devolved powers for inclusion in the pandemic flu bill , are also required

SG Preparedness : Update April/May 2019

Additional Work been completed?

- This workstream was affected by the contingency planning for EU Exit, which involved many members of the group and also was a priority across SG where staff had to prioritise EU Exit “no deal” work over their own Pandemic Flu planning and engagement with our objectives..
- Progress has been made with the first and second objectives (raise awareness across Directorates, and embed pandemic flu assurance into the SG assurance framework)
- Pandemic flu assurance has been embedded into the SG Certificate of Assurance (CofA) process as the guidance in the strengthened section of the 2019 CofA requirements says that Pandemic Flu should be a specific scenario within Directorates’ business continuity plans.

Updated Timescales?

- The updated timescale for the completion of the work is September 2019. The workstream last met on 2 May 2019 and commissioned and rescheduled the remaining work. It will conduct a further stocktake of progress in July. There will be a further meeting of the workstream in September where the Chairs will sign off the completed work.

Additional updates for PFPB awareness?

- A further update will be produced for PFPB following the planned September 2019 meeting of the Workstream.

PFP Board Action

- Request for workstream to be signed off by the Board, and to be brought under normal business.

Annex A – Legislation – Latest Bill Position

Provision Description	Include SG clause	SG Policy Instructions Drafted	Notes	RAG	Last Position
Indemnity for health professionals	Yes	Awaiting	<p>Agree in principle and systems already in place for NHS staff / contracted services.</p> <p>There was concern with definition of “additional duties” in UK instruction as we feel it is open to misinterpretation / legal challenge however this phrase is <u>NOT</u> included in the draft Bill.</p>	Green / Amber	<p>Policy aiming to mirror the clause set out by UKG in the second draft of the bill.</p> <p>PIN / Written clauses to be complete by 30 July 2019</p>
Mental Health – reduce number of doctors required to admit, lengthen time limits and transfer of patients	Yes	Awaiting	<p>MHU concerns over aims and outcomes of any legislative changes. Emphasised that sensitive and/or contentious powers may never actually be used however should be available (for all UK nations).</p> <p>MHU received a copy of the draft UK Bill in January containing the draft clauses in relation to mental health and are in the process of reviewing this to better understand what is being put in place in England/Wales. MHU comparing that to previous work (5-6 years ago) that was undertaken by SG to consider potential amendments to mental health legislation in the event of a civil emergency. Policy area is keen to engage stakeholders and obtain Ministerial direction before committing to anything.</p> <p>This will help to determine a series of options for a way forward which we intend to put to Health Ministers for views by the end of March.</p>	Amber	<p>March 2019 MHU put a forward a brief to Cab Sec and Minister for Mental Health outlining the background and rationale for creation of flexibilities.</p> <p>Sought agreement from ministers to:</p> <ul style="list-style-type: none"> Confirm their priority for this work and if they still wish consideration to be given to inclusion of amendments to Scottish mental health legislation within the UKG Pandemic Influenza Bill. Allow policy teams to undertake targeted consultation with key stakeholders to ensure the workability of any proposed changes and the continued compatibility with ECHR requirements regarding patient safeguards. <p>Subject to legal resource. For completion by Autumn 2019.</p>

Provision Description	Include SG clause	SG Policy Instructions Drafted	Notes	RAG	Last Position
Closure of Schools and colleges	Yes	School PINs sent to SGLD Nov 2018 Colleges remain outstanding	<p>OPC in process of making final amendments to draft clauses for school closures.</p> <p>Colleges: separate clauses required for colleges (Further Education)</p> <p>Note: Universities (Higher Education) are out with scope</p>	<p>Green</p> <p>Amber</p>	<p><u>Schools</u>: to be completed by 10th June 2019.</p> <p><u>Colleges</u>: Policy area failed to engage despite repeatedly correspondence. Issue to escalated further urgently.</p>

Paper 8.4 a and b Project Governance

Purpose: Update PFPB on the Project Timetable and Risk Register.

Action: For awareness

(Documents were sent separately. Some copies will be provided on the day. If printing A3 size is recommended for both documents)

Paper 8.5 SG Project Position Paper

Purpose: This paper provides an overview position of the UK and SG programmes of work in relation to pandemic flu preparedness / readiness. It also provides a suggested plan of work of outstanding issues be taken forward for SG policy areas as part of routine business following expiry of resources supporting the dedicated project team as of 31 March 2019.

Action : PFPB to discuss and identify SG business area to take on the remaining project management of the remaining actions

Contents

INTRODUCTION	16
BACKGROUND	16
UK CROSS GOVERNMENT PROGRAMME	16
SG PANDEMIC FLU READINESS BOARD	17
SG WORKSTREAMS	18
LEGISLATION	21
CONSEQUENCE OF NO SCOTTISH CLAUSES	22
MINISTERIAL AWARENESS	22
OUTSTANDING AREAS OF WORK	23
RESOURCING OUTSTANDING WORK	23
SUMMARY / RECOMMENDATIONS	23

Introduction

- 1) This paper provides an overview position of the UK and SG programmes of work in relation to pandemic flu preparedness / readiness. It also provides a suggested plan of work of outstanding issues to be taken forward for SG policy areas as part of routine business following expiry of resources supporting the dedicated project team as of 31 March 2019.

Background

- 2) The UK Pandemic Flu Readiness Programme (PFRB) was commissioned by the National Security Council in early 2017 to work collaboratively with DA's and other key stakeholders to:

“ensuring the UK was prepared to manage the health effects of severe pandemic influenza, as defined by the reasonable worst case scenario in the National Risk Assessment, and the wider consequences it would have”.¹

- 3) The Board established in Spring 2017 with an initial completion date of 31 March 2018. The SG Pandemic Flu Preparedness Board (PFPB) was subsequently established in Autumn 2017 and a small dedicated project team was recruited for an initial one year period (December 2017 – December 2018) , to oversee Scottish and cross-government interests across the UK.

UK Cross Government Programme

- 4) The cross-government project operated 5 main workstreams focussing on
 - health;
 - community care;
 - Excess Deaths;
 - Sector Resilience; and
 - Cross-Cutting Enablers (Legislative, Communications and Moral and Ethical).
- 5) Progress has been made across all workstreams however there remains a considerable amount of work to be undertaken in some areas before the programme can be considered complete, and signed off by the National Security Council (NSC). UK Ministers wrote to NSC in April 2018 (extract below) to update on the work undertaken, supported by engagement with the local responder community, to strengthen the alignment of plans and activities.

“ This has delivered:

- *improved plans of the health sector to flex systems and resources to expand beyond normal capacity levels;*
- *clear plans to prioritise and augment adult social care and community health care during a pandemic response;*
- *refreshed, and soon to be reissued, guidance for local responders on planning for large numbers of additional deaths, underpinned by a comprehensive analysis of capability across the country;*
- *updated planning assumptions for workforce absence and stress-tested plans from Lead Government Departments which have responsibility for particular sectors, covering both the peak and duration of workforce absence;*

¹ Cross-Government Pandemic Flu Readiness Board (PFRB): Terms of Reference (April 2017)
Page 16 of 29

- confirmed UK Government policy content for a draft Pandemic Influenza Bill, to be held internally and taken through Parliament if required, to support the response to a severe pandemic. We have also worked closely with colleagues in the Devolved Administrations to seek to develop a one-UK approach;
- a comprehensive four nations pandemic influenza health-focused communications strategy; and
- options to ensure Government thinking is supported by moral and ethical advice.

Next Steps

Consideration of this risk holistically and collaboratively across Government and with the Devolved Administrations is vital. A lot has been achieved, but there is more to do to both maintain and enhance preparedness to an acceptable level. The intention is to finalise national arrangements; and prepare products to support the continued enhancement of local arrangements including refreshing the four nation UK Influenza Pandemic Preparedness Strategy.

It is vital that this work continues to be prioritised and resourced by Departments, given the significance and scale of the risk. This cross-Government work will continue to be overseen by the Pandemic Influenza Readiness Board.”

- 6) The NSC subsequently granted the programme a one year extension to 31 March 2019 to complete remaining work.

Note: Progress made on activities in Scotland is provided at para 11 below.

- 7) In November 2018, the UK Pandemic Flu Readiness Board (PFRB) determined that due to competing government priorities (mainly EU Exit related) the project should be put on hold, with the exception of the development of the draft UK Pandemic Flu Bill which would continue. Since then, no further meetings have taken place. The PFRB is expected to meet in June 2019 (no details available yet) to discuss progress made, next steps; with an update expected to go to UK Ministers and the NSC in near future.
- 8) Since then, several workstreams have suffered delays and/or resource implications which have impacted on several key milestones, products and deadlines. It remains unclear when the cross-government project activities is likely to resume fully and /or complete its original aims and objectives. (It is expected this will be discussed at the PFRB meeting in June.)
- 9) Additionally, the main UK Pandemic Flu Strategy (2011) is due to be refreshed as part of the cross-government programme of work. A PID was submitted to the CG PFRB in November 2018 setting out key milestones and deadlines for work to be completed over the period November – summer 2019. This additional piece of work will also require to be undertaken as part of SG routine business over the course of 2019, as soon as work commences at UK level.

SG Pandemic Flu Readiness Board

- 10) In summer 2017, the Deputy First Minister commissioned a new SG Pandemic Flu Preparedness Board (PFPB) with cross-cutting SG membership to lead on Scotland's interests at UK level and further develop preparedness in Scotland.
- 11) The PFRB agreed to operate a programme of 6 workstreams (compared to 5 UK workstreams) which extend across portfolios of responsibility. These are:

- Health and social care (inc Moral and Ethical)
- Legislative
- Excess Deaths
- Sector Resilience
- Communications
- SG Preparedness

- 12) Since the project inception a number of activities across workstreams have been developed which have improved the overall state of pandemic flu readiness across Scotland, and other UK nations. An overview of which is provided in table at para 18. Additionally, SG officials have established good working relations with counterparts in all 4 UK nations and contributed significantly to the list of deliverables sent to NSC in April 2018 (as set out in paragraph 5 above).
- 13) PFRB met approximately every 2 months up until November 2018 however recent meetings have been cancelled / postponed due to availability and competing priorities. The board last met on 13 November 2018 and is due to meet next on 5 June 2019. Recognising delays to the programme of work at UK and Scotland level, the board agreed to continue to meet at least until Autumn 2019. (Lifespan of the SG board is linked to the longevity of the parallel UK PFRB.)

SG Pandemic Flu Readiness: Project Team

- 14) A small SG project team was established in December 2017 for a one year period up until December 2018. Given the delays to the UK and SG programmes of work the project officer has been retained in post (originally until 31 March 2019 further extended until 30 June 2019). The project manager moved to a new post in December 2018. Staff resource is currently therefore being provided without budget allocation and requires to be reviewed as a matter of urgency.

SG Workstreams

- 15) At the meeting of the PFRB on 13 November 2018 it was agreed to sign-off Sector Resilience and Excess Deaths workstreams from the programme and handover to business areas.
- 16) The remaining workstreams are at varying stages of progress. the PFRB also agreed to extending work on the remaining workstreams Health and Social Care (inc Moral & Ethical); Legislative; and Communications until at least 31 March 2019.
- 17) The H&SC, Communications and SG Preparedness workstreams are primarily being taken forward by staff as part of their business area roles and responsibilities. No additional staff resource(s) are required to complete outstanding tasks and actions. Workstream leads have however suggested they should remain part of current project governance arrangements and the focus of the PFRB / to help ensure outstanding work is fully completed.
- 18) The table below provides an overview of key achievements, products and progress made on original aims and objectives (remaining workstreams only):

Legislation

Aims and Objectives	What has been achieved / delivered
Minimise potential disruption to all sectors during outbreak of pandemic flu.	Identified out of the recommendations from exercise Cygnus which apply to Scottish legislation, and if clauses need to be included in UK bill, and instructed relevant policy teams to liaise with their legal teams, and some PINs and legal instructions have been completed.
Liaise with UKG and DA's to consider, test and amend legislation on relevant reserved matters.	Continue to challenge the UKG and liaise with other devolved administrations on legislation with high cross boarder impacts.
Work collaboratively with national agencies and key partners across Scotland to develop and test amendments to legislation on devolved matters.	<p>Initial consultations with policy felt that existing legislation was robust enough to deliver required flexibilities, however upon challenging by Project Team – SG will now be taking forward three clauses for inclusion: School/College Closures, Indemnification of Medical Professionals, and mental health.</p> <p>Continued working with policy areas and 'arm's length' engagement with affected agencies/stakeholders to deliver legislative changes.</p> <p>(No external engagement undertaken yet)</p>
Deliver legislative changes as quickly as possible / ensure legislation is readily available for introduction if required	Contributed, and at times led, the discussion to agree procedures required to timeously introduce legislation in UK / Scottish Parliaments. Draft UK guidance currently being considered. (There are some outstanding issues / concerns yet to be fully addressed by UKG)

Health and Social Care

Aims and Objectives	What has been achieved / delivered
Enhancing national and local response to provide appropriate healthcare capability during a severe pandemic, with regard to secondary care and primary care and incorporating community healthcare	NHS England developed surge document for internal government use during a severe pandemic. This will be retained by the 4 Nations as one basis for response at the time of a pandemic.
Developing options for response in adult social care sector and in community health care during a serious flu pandemic and better understanding impact on adult social care system.	4 Nations working group oversaw development of a paper on potential options and issues for response in adult social care and community health. DHSC, who led the development, have not confirmed how the content can be disseminated/utilised by the 4 Nations and it is

	likely this will inform the next iteration of guidance in Scotland.
Providing updated pandemic flu guidance for health & social care in Scotland	Further work on pan flu operational guidance for health & social care in Scotland had been paused due to internal pressures and anticipation of UK Pan Flu Strategy review – now being progressed – and draft to be shared with pandemic flu contacts at Boards in June 2019

Communications	
Aims and Objectives	What has been achieved / delivered
Engage with UK Gov to ensure Scottish interests are represented in all UK planning	Actively contributed to cross government discussions.
Develop an SG Comms Activation/Mobilisation Toolkit to formalise specific SG structures which will be activated to ensure an effective cross-communications response, including links to UK Gov and Scottish PCGs	SG Comms Activation/Mobilisation Toolkit has been finalised and agreed across SG Comms and Resilience. This also formalises the roles and responsibilities of a national Scottish Government comms cell, and the priorities for SG Comms which would form the basis of initial Ministerial advice
Recommended Ministerial leads, initial communications recommendations.	This work would be taken forward during a pandemic.
Draft or contribute to key messaging advice papers as required, dependent on and informed by the work of both UK Comms groups and the decisions made by other SG PRFB workstreams	Ongoing
SG Preparedness	
Aims and Objectives	What has been achieved / delivered
To raise awareness across Directorates to inform Directorate plans for their own business priorities; and Directors' engagement with, and assurance of, appropriate plans for the public bodies they sponsor.	Pandemic flu assurance has been embedded into the SG Certificate of Assurance (CofA) process as the guidance in the strengthened section of the 2019 CofA requirements says that Pandemic Flu should be a specific scenario within Directorates' business continuity plans.
To embed pandemic flu assurance into the SG assurance framework [certificates of assurance; DG assurance meetings]	

To plan for the people aspects of a period of pandemic flu so that managers and staff are aware of their roles and responsibilities before, during and after a period of pandemic flu	Ongoing
To ensure appropriate support is in place for staff who may be affected and that the wellbeing of the workforce is appropriately considered	Ongoing
To develop a corporate pandemic flu contingency plan, including an internal comms strategy, in conjunction with the comms workstream	Ongoing. Internal communications strategy has been drafted. Lessons are being learned and incorporated from SG EU Exit 'no deal' contingency plans.

Legislation

- 19) All 4 UK nations committed to using a single draft UK Pandemic Flu Bill, developed in advance and held in reserve, to support a UK wide response to a pandemic outbreak. The UK workstream is being led by Cabinet Office Civil Contingencies Secretariat (CCS) in collaboration with support from DAs and other UKG departments.
- 20) The SG Legislative workstream is led by the project manager, supported by the project officer. This workstream has experienced delays on the development and provision of Scottish clauses for inclusion in the draft Bill including:
- policy areas capacity to develop Policy Instruction Notes / Legal Instructions;
 - lack of SG legal resource due to other priorities (EU Exit mainly);
 - concern over the lack of key stakeholder engagement; and
 - a need for further engagement with respective Scottish Ministers.
- 21) Following extensive discussions with SG policy areas, only 3 topics remain as requiring Scottish clauses for inclusion in the UK Bill:
- Closure of schools and colleges;
 - Indemnification of health workforce; and
 - Mental health.
- 22) CCS officials have queried the delay in providing Scottish clauses for inclusion in the draft Bill. All reasonable attempts have and continue to be made to meet project deadlines. It should be noted that some policy areas challenged the need for the inclusion of Scottish clauses at all- specifically in respect of (i) mental health; and (ii) prisoner release where it is felt current legislation is capable of delivering the same outcomes. Further legal advice and, in some cases, Ministerial guidance was required.
- 23) Based on legal advice, clauses to allow for early release of prisoners is no longer required as current Scottish regulations allow for temporary release of prisoners, returning to custody at a later date. The main difference between the powers granted in the draft UKG Bill and Scottish regulations is that the power to release in the UK Bill is a power to release a prisoner on licence with no requirement to return (unless the licence is revoked). Scottish powers in the 1989 Act and 2011 Prison Rules are to release prisoners on a temporary basis.

- 24) The delay in providing instructions / clauses is unfortunate however can be seen as an opportunity to allow more work to be undertaken to better inform the development of, and need, for Scottish clauses for inclusion in the Bill. This could include policy areas engaging with key stakeholders, portfolio Ministers and other policy areas to ensure the impact of these legislative changes delivered the necessary outcomes at ground level.

Consequence of no Scottish Clauses

- 25) There is a risk that the draft UK Bill develops without any Scottish (and indeed other DA) clauses being provided for inclusion / or being provided later than scheduled. This would short-lived impact on the state of the draft Bill being held in reserve. Based on earlier discussions and assessment of current legal powers in Scotland, there is a strong level of assurance across policy areas / legal advisors that Scotland is well-placed to manage the specific areas being considered for inclusion in the UK Bill.
- 26) Should this situation arise it is possible to submit clauses: (i) later in 2019; (ii) in advance of a pandemic; or (iii) as part of the Bill review process should the Bill be brought forward for introduction. Arrangements for doing have yet to be provided / agreed with UKG.
- 27) CCS has raised concerns with the workstream lead / project manager on the delay in providing Scottish clauses (other DAs are also unlikely to meet these deadlines) which they feel is impacting on completion of the draft UK Bill. The project team will continue to work closely with all parties to deliver clauses as soon as possible, within available resources. There is however a risk that this delay is highlighted by CCS in the next update to UK Ministers / NCS.
- 28) Annex A provides an overview of clauses to be included in the draft UK Bill.

Legislative Process and Supporting documentation

- 29) It was agreed at the outset of the project that a UK-wide Bill applicable to all 4 nations presented the best legislative process to deliver required changes / flexibilities during a pandemic. In order to introduce a single Bill there are different parliamentary procedures to be considered in order for legislation to be timeously implemented by all 4 nations. SG officials has been working with other nations to map out these requirements and draft documentation to achieve this. This work has been taken forward by SG Parliament and Legislation Unit. UKG provided a draft LCM Procedures paper (on 28 May) which is currently being reviewed by PLU to ensure it takes full account of legislative procedures in Scotland.
- 30) As with all legislation there is a requirement to provide supporting documentation (Explanatory Notes, Impact Assessments, etc) as part of the legislative process. The UK project team based in UK Cabinet Office is developing supporting documentation for relevant England / England & Wales legislation. Scottish clauses will require similar documentation and it may be possible to utilise the E/E&W documentation for our purposes. Responsibility for providing supporting documentation lies with the SG policy areas who would be required to develop documentation once clauses are finalised. (Note: For purposes of clarity and to enforce the UK wide approach, it may be necessary to reference Scotland in supporting documentation for non-Scottish clauses also).

Ministerial Awareness

- 31) To date, awareness of this programme of work has primarily focussed towards the Deputy First Minister and Cabinet Secretary for Health and Sport in recognition of their respective

responsibilities for resilience and health interests. Cabinet Secretary for Health and Sport requested officials undertake a post-Cabinet presentation increase awareness of the impact of pandemic flu across all portfolios. This has been arranged and postponed several times between December 2018 – June 2019, and has recently rescheduled for 24 September 2019.

- 32) Some policy areas were concerned with the lack of engagement with their own portfolio Ministers on legislative changes / flexibilities as a potential issue. It has been explained, that it is necessary to create similar legislative powers across all 4 nations in order to meet the Ministerial commitment to managing a pandemic outbreak at UK level. It is recognised that creating powers does not necessarily mean that these powers would be used (or certainly not in the first instance) to mitigate the impact of pandemic flu.

Note: DG/ Portfolios will be expected to provide advice on specific issues to Ministers during an pandemic outbreak – which would include operational flexibilities, use of existing legislation, etc as well as provisions within the UK Pandemic Flu Bill (Act).

- 33) Scottish Ministers will be updated on completed and outstanding areas of work in Scotland in the coming weeks. It is hoped that this can also include an update on the cross government position following the next UK Board meeting (date tbc), and once SG has had sight of the UK Minister's update to NSC.

Outstanding Areas of Work

- 34) Where possible workstream activities are being completed and/or migrated over to SG teams as part of business as usual. Work on Legislation; H&SC Guidance; Communications; Scottish Government Preparedness and the review of the 2011 UK Pandemic Flu Strategy remains outstanding. Details of work to be undertaken / completed is provided at Annex B - Outstanding Work Delivery Plan.

Resourcing Outstanding Work

- 35) The SG project team has to date managed the cross-government and Scottish aspects of this programme, with support from dedicated Workstreams Leads (WSLs), and leadership of the PFPB. Policy areas and SGLD have also provided time and resource since early 2018. The postponement/delay at UK level makes it difficult to provide definitive timescales for delivery of key milestones however this should not be seen as a reason not to continue to progress outstanding work relative to Scotland's interests.
- 36) Annex B identifies the work still to be completed and provides suggested deadlines for key deliverables. Most of which can and should be undertaken as routine business within policy / business areas subject to ongoing provision of an appropriate level of project management support, and PFRB oversight.
- 37) HRU has to date resourced and housed the project team. Given the project manager's change in role (as of December 2018); pressures on staff resources, etc view are sought on which SG business area(s) assumes oversight of the outstanding work to be undertaken 2019.

Summary / Recommendations

- 38) PFRB is asked to:
- i. Note progress made on UK and SG workstreams and products;
 - ii. Note delays to and outstanding work in relation to development of the draft UK Bill;

- iii. Consider the work undertaken and yet to be completed on provision of Scottish Clauses for the draft UK Bill;
- iv. Discuss the risk to Scottish Ministers relating to the delay in above clauses;
- v. Consider and agree the Outstanding Work Delivery Plan at Annex ; and
- vi. Provide a view on which SG business area takes forward outstanding work.

Pandemic Flu Preparedness: Project Team
31 May 2019

Annex A: Scottish Legislative Clauses for inclusion in UK Pan Flu Bill

Provision Description	Include SG clause	SG Policy Instructions Drafted	Notes	RAG	Last Position
Indemnity for health professionals	Yes	Awaiting	<p>Agree in principle and systems already in place for NHS staff / contracted services.</p> <p>There was concern with definition of "additional duties" in UK instruction as we feel it is open to misinterpretation / legal challenge however this phrase is <u>NOT</u> included in the draft Bill.</p>	Green / Amber	<p>Policy aiming to mirror the clause set out by UKG in the second draft of the bill.</p> <p>PIN / Written clauses to be complete by 30 July 2019</p>
Mental Health – reduce number of doctors required to admit, lengthen time limits and transfer of patients	Yes	Awaiting	<p>MHU concerns over aims and outcomes of any legislative changes. Emphasised that sensitive and/or contentious powers may never actually be used however should be available (for all UK nations).</p> <p>MHU received a copy of the draft UK Bill in January containing the draft clauses in relation to mental health and are in the process of reviewing this to better understand what is being put in place in England/Wales. MHU comparing that to previous work (5-6 years ago) that was undertaken by SG to consider potential amendments to mental health legislation in the event of a civil emergency. Policy area is keen to engage stakeholders and obtain Ministerial direction before committing to anything.</p> <p>This will help to determine a series of options for a way forward which we intend to put to Health Ministers for views by the end of March.</p>	Amber	<p>March 2019 MHU put a forward a brief to Cab Sec and Minister for Mental Health outlining the background and rationale for creation of flexibilities.</p> <p>Sought agreement from ministers to:</p> <ul style="list-style-type: none"> Confirm their priority for this work and if they still wish consideration to be given to inclusion of amendments to Scottish mental health legislation within the UKG Pandemic Influenza Bill. Allow policy teams to undertake targeted consultation with key stakeholders to ensure the workability of any proposed changes and the continued compatibility with ECHR requirements regarding patient safeguards. <p>Subject to legal resource. For completion by Autumn 2019.</p>

Provision Description	Include SG clause	SG Policy Instructions Drafted	Notes	RAG	Last Position
Closure of Schools and colleges	Yes	School PINs sent to SGLD Nov 2018 Colleges remain outstanding	OPC in process of making final amendments to draft clauses for school closures. Colleges: separate clauses required for colleges (Further Education) Note: Universities (Higher Education) are out with scope	Green Amber	<u>Schools</u> : to be completed by 10 th June 2019. <u>Colleges</u> : Policy area failed to engage despite repeatedly correspondence. Issue to escalated further urgently.

Notes:

1. LCM / parliamentary procedures yet to be agreed.
2. Supporting documentation (Explanatory Notes) still to be provided inc topics where no Scottish clauses are to be included.

Outstanding Work Delivery Plan

WS Ref	Workstream	Outstanding Tasks	SG Lead / Stakeholders	Lead Area	Revised Timescales	Status	Comments
	General	Refresh 2011 UK Pandemic Flu guidance	tbc	UKG	Spring 2019		UKG lead with input from SG and Other DAs. This work has been delayed – no other timings provided. UKG see this as the main opportunity to involve Ministers of all 4 nations
	General	Testing and exercising	ScoRDS, RRP, etc	Resilience Division / HRU	Tbc	Ongoing	Links with HRU testing
	General	Post cabinet presentation	PFRB Chairs / DCMO	Project Team	Autumn 2019		Presentation postponed 3 times. Also need to link closer with Scottish Resilience Partnership / Scottish Risk Assessment
	General	PFRB Meetings / Secretariat	PFRB members / project team	HRU / Project team	End 2019		PFRB agreed need to meet until at least Autumn 2019. Secretariat resource, project support to be agreed
1	Health and Social Care (inc. Moral & Ethical)	Issue draft Pan flu operational guidance for health & social care in Scotland Final version complete	Name Redacted	Health Resilience	June 2019 Sept 2019	Ongoing	Delays in UK guidance has impacted / delayed this work.
1	Health and Social Care (inc. Moral & Ethical)	SG to contribute to the development of the Moral and Ethical guidance.	DCMO / Health Resilience	Health Resilience	Autumn 2019 (estimated)		UKG Moral & Ethical guidance was updated in Nov 2017. Paper 5 of Nov 2018 meeting of the CG PFRB covered this – no update since.

WS Ref	Workstream	Outstanding Tasks	SG Lead / Stakeholders	Lead Area	Revised Timescales	Status	Comments
2	Legislation	Legislative: 1. Mental Health 2. Closure of schools and colleges 3. Indemnification of health workforce 4. Parliamentary process / LCM documentation, etc	Policy areas Legal Resource Project Team		April – September 2019	On going	1 are being contested by policy areas. Review of mental health planned and may include the addition of flexibilities. 2&3 are rated Green for need; Amber for progress 4 remains outstanding with concerns over CG approach.
2	Legislation	Key stakeholder engagement	SG Policy areas	SG	-TBC	N/A	No external engagement to date. Policy areas keen to engage key stakeholders. (See UK Stakeholder Engagement Strategy / Handling Plan)
3	Excess Deaths	Business As Usual	Name Redacted	Resilience Division	N/A	Complete	Agreed for sign off as routine business
4	Sector Resilience	Business As Usual		Critical Infrastructure Unit (CIU)	N/A	Complete	Agreed for sign off as routine business
5	Communications	Wider stakeholder engagement process	SG Communications Group	Resilience Comms Officer	2019		WSL has stated that the pandemic flu project/board would be the best driving force behind this work.

6	SG Preparedness	<ul style="list-style-type: none"> • plan for the people aspects of a period of pandemic flu • ensure appropriate support is in place for staff • develop a SG corporate pandemic flu contingency plan 	Name Redacted	S&BC	Sept / Oct 2019	Good progress made.	Request for workstream to be signed off by the Board, and to be brought under normal SG business
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June 2019