

SCOTTISH CABINET

MINUTES OF MEETING HELD IN ST ANDREW'S HOUSE, EDINBURGH
AT 10.00 AM ON MONDAY, 4 JANUARY 2021

Present:	Rt Hon Nicola Sturgeon MSP	First Minister
	John Swinney MSP	Deputy First Minister and Cabinet Secretary for Education and Skills (*)
	Aileen Campbell MSP	Cabinet Secretary for Communities and Local Government (*)
	Roseanna Cunningham MSP	Cabinet Secretary for the Environment, Climate Change and Land Reform (*)
	Fergus Ewing MSP	Cabinet Secretary for Rural Economy and Tourism (*)
	Kate Forbes MSP	Cabinet Secretary for Finance (*)
	Jeane Freeman MSP	Cabinet Secretary for Health and Sport
	Fiona Hyslop MSP	Cabinet Secretary for Economy, Fair Work and Culture (*)
	Michael Matheson MSP	Cabinet Secretary for Transport, Infrastructure and Connectivity (*)
	Michael Russell MSP	Cabinet Secretary for the Constitution, Europe and External Affairs (*)
	Shirley-Anne Somerville MSP	Cabinet Secretary for Social Security and Older People (*)
	Humza Yousaf MSP	Cabinet Secretary for Justice (*)
	In Attendance:	Leslie Evans
NR		Solicitor General (*)
Graeme Dey MSP		Minister for Parliamentary Business and Veterans (*)
Dr Gregor Smith		Chief Medical Officer
Professor Jason Leitch CBE		National Clinical Director
Ken Thomson		Director-General, Constitution and External Affairs
Katrina Williams		Director-General, External Affairs (*)
Penelope Cooper		Director of Outbreak Management (*)
Dominic Munro		Director, Exit Strategy (*)
David Rogers		Director of Constitution and Cabinet (*)
Shirley Rogers		Director of Organisational Readiness (*)
Gillian Russell		Director of Health Workforce, Leadership, and Service Reform (*)
Scott Wightman		Director of External Affairs (*)
John Somers		First Minister's Principal Private Secretary (*)
James Hynd		Head of Cabinet Secretariat (*)
Alisdair McIntosh		Strategic Adviser, Outbreak Management (*)
Sam Anson		Deputy Director, Improvement, Attainment and Wellbeing (*)
Amanda Gordon	Deputy Director, Outbreak Management Policy (*)	
Miranda McIntosh	Deputy Director, Outbreak Management Strategy (*)	
Kate Higgins	Special Adviser (*)	
Colin McAllister	Special Adviser (*)	

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Stuart Nicolson
Aileen Easton
NR
Chris Mackie
Sinéad Power
NR
NR

Special Adviser (*)
First Minister's Official Spokesperson (*)
PS/First Minister (*)
FM COVID Briefing Unit (*)
First Minister's Policy and Delivery Unit (*)
PS/First Minister (*)
Cabinet Secretariat (*)
Cabinet Secretariat (*)

(*) by tele-conference

Minutes of Meeting held on 22 December 2020

1. The minutes of the meeting held on 22 December (SC(20)50th Conclusions) were approved.

COVID-19: Coronavirus Update (oral item)

2. The First Minister invited the Chief Medical Officer (CMO) to provide Cabinet with an update on the progress of the COVID-19 pandemic and the work under way to counter its effects. As at 9 a.m. on Monday, 4 January, there had been 136,498 confirmed cases of COVID-19 infection in Scotland, an increase of 1,905 compared with the previous day. Test positivity for the previous day's testing stood at around 15 per cent. Both measures were significantly higher than when Cabinet had last met, on 22 December. This was likely to reflect the increasingly rapid spread of the new, more transmissible variant of the SARS-CoV-2 virus (VOC 202012/01), which already accounted for around half of new cases in Scotland. New cases were spread across all mainland NHS Boards, although previous days had also seen a number of cases in island areas, including a localised outbreak in Shetland.

3. CMO drew Cabinet's attention to the rapidly deteriorating situation across the four nations, especially in England and Northern Ireland. Although Scotland appeared to be lagging slightly, there was no doubt that the situation would worsen north of the border too. Earlier, the four UK CMOs had met and determined that, based on the advice of the Joint Biosecurity Centre (established in May 2020), the UK alert level should move, for the first time, to Level 5 – its highest level – indicating that there was now a material risk of the NHS being overwhelmed (probably over the following three weeks). There were very high rates of community transmission in all parts of the UK, with substantial numbers of COVID-19 patients in hospitals and in intensive care. In a worrying development, there seemed to be no evidence that the recent 'lockdown' measures in England had had any noticeable effect in controlling the spread of the new variant.

4. The First Minister described the current situation as highly perilous and of greater concern than at any time since March 2020, notably because the NHS now had less capacity and resilience than the previous spring. In the week from 23 to 30 December, the seven-day incidence of cases per 100,000 population had increased by some 65 per cent – from 136 to 225 – and the statistics did not yet reflect any increase in cases that might have resulted from gatherings over the Christmas and New Year holidays. The prospects for the immediate short term therefore appeared worrying.

5. Bed occupancy in the NHS had almost reached the peak levels last seen in April 2020, and was nearing surge capacity in many cases. Intensive Care Units (ICUs) were currently less full, partly as a result of improved treatment protocols for COVID-19, but all mainland Boards were working at above their normal winter ICU capacity. However, current demand for beds reflected cases contracted two to three weeks previously, and it followed that – whatever new measures were now taken – the NHS would inevitably find itself in a much more severe situation in a fortnight's time.

COVID-19: Additional Emergency Measures in Level 4 (Paper SC(21)02)

6. The First Minister and Mr Swinney introduced paper SC(21)02, which invited Cabinet to consider a range of immediate emergency braking measures to strengthen protective measures in all Level 4 areas, in response to the spread of the new variant strain of the coronavirus.

7. The First Minister noted that, while it might appear reasonable to await further data before deciding on additional measures, the course of the pandemic thus far had shown that this would be a mistake: the actions described in the paper were needed to be put in hand immediately if they were to have any substantial effect in arresting the spread of the new variant. Taken as a whole, the package had been designed to have the maximum impact, by reducing as far as possible the opportunities for the new, more transmissible strain of the virus to be transmitted between people, while still balancing consideration of the Four Harms.

8. Chief among the package of strengthened measures summarised in the paper at Annex B were proposals to make it a legal requirement – as of the following day – to stay at home (except for essential shopping, education, childcare, or to support the vulnerable) and to work from home wherever possible.

9. Numbers meeting outdoors would also be limited further, reducing the number of people (except children under 12) from two households who could meet outdoors (moving from 'six from two' to 'two from two'); the 'two from two' limit would also apply to adults meeting for organised outdoor exercise and sport. The current exemption for organised activities for under 18s would be amended to apply only to under 12s.

10. Although the paper also proposed that the current 'six-from-six' rule allowing gatherings of up to six 12-to-17 year olds from up to six households be replaced by a 'three-from-three' limit, Cabinet was asked to consider whether imposing the same 'two-from-two' limit as for other outdoor gatherings might be a simpler message to communicate with the aim of improving compliance.

11. Other key measures proposed in the paper (to come into effect from Friday, 8 January) would include closing places of worship to the public, reducing numbers at weddings and civil partnerships to the legal minimum, and prohibiting wakes and other post-funeral gatherings. In addition, further classes of premises, service providers and non-essential retail would be closed: this would cover larger retailers' showrooms, clinics offering cosmetic and aesthetic procedures, and ski centres. Finally, the one metre physical distancing exemption in works canteens would end.

12. Although the manufacturing and construction sectors would be permitted to continue their activities for the present, while following stringent safety rules, the First Minister intended to signal that a change in this position might yet be required, depending on future progress made and the course the pandemic took. Indeed, while all the new measures were intended to remain in force for at least the month of January, with a review after two weeks, the First Minister intended to emphasise, in her statement to the Parliament that afternoon, that it could not be predicted with any certainty when measures might be able to be relaxed, and a considerably longer period of severe restrictions could not be ruled out at this point.

13. The current situation might usefully be compared to a race, in which the coronavirus occupied one lane, and the vaccine(s) the other. The new variant meant that the virus was accelerating rapidly, and tougher restrictions would therefore be required to slow its progress, while ensuring that the vaccination programme proceeded as rapidly as possible.

14. The final change which the First Minister planned to announce that afternoon was a requirement for all schools to continue to use remote learning (except for vulnerable children and children of key workers) until – at the earliest – 1 February, instead of the current planned date of 18 January. This was necessary both because of the scale of community transmission of the new variant and because of the uncertainties currently surrounding the ease and extent of transmission of the new variant between symptomless young people.

15. Mr Swinney noted that the current position was deeply serious and, arguably, presented a set of problems of greater magnitude than in the spring of 2020. One of the main challenges over the coming few months would be to get across to the public at large that, despite almost ten months of severe restrictions, now was not the time to relax observance, despite the arrival of vaccines.

16. Mr Swinney had discussed the proposed approach to education with the COVID-19 Education Recovery Group earlier that morning. Issues discussed included the interaction of education with the wider economy, since greater economic activity would mean higher demand for ‘key worker’ places in schools. Local authorities were already reporting that demand for ‘key worker’ places was reaching levels significantly higher than in spring 2020: careful oversight would be required to ensure that levels remained manageable and that ‘key worker’ status was only accorded in appropriate circumstances.

17. The language used to describe new measures for education would need to be carefully calibrated so as to avoid unintended consequences – such as making it more difficult to resume face-to-face teaching in due course. It would therefore be better to speak of moving to the delivery of remote learning rather than the shorthand of ‘closing schools’.

18. The early learning and childcare (ELC) sector presented a number of particular challenges, not least the financial difficulties currently endured by private providers over recent months, which would be likely to make the ultimate delivery of the annual target figure of 1,140 hours of funded childcare for eligible two year olds

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difficult to assure in areas which placed significant reliance on the independent sector.

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19. Teaching unions and others were beginning to make strong representations in favour of the early vaccination of teachers and other school staff. While there was a debate to be had about the level of transmissibility of the new variant among young people, a decision simply to vaccinate teaching staff as a priority group might appear to run contrary to the age-based prioritisation model – based on vaccinating those at highest clinical risk in the first instance – which had been adopted by the Joint Committee on Vaccination and Inoculation (JCVI) and agreed at the meeting of the Cabinet held on 1 December 2020 (*SC(20)46th Conclusions refers*).

20. In discussion the following points were made:

(a) The range of new restrictions suggested in the paper should be seen as an initial response at this stage: further tightening might be required over coming weeks in light of emerging data. Nevertheless, the new restrictions should, rightly, be seen as approaching the levels seen in the first, ‘lockdown’ stage of the response to the pandemic in spring 2020;

(b) It followed that it would not, at this stage, be sensible for Cabinet to consider even marginal lifting of restrictions: the highest priority must instead be accorded to ensuring the fullest degree of compliance with the renewed restrictions and maximising public understanding of why they were so necessary;

(c) In presenting the new rules, it would be important to be clear about the importance of travel restrictions: some had suggested that the previous limits, based on local authority boundaries, had not been sufficiently well observed. The main new restriction – that people should stay at home except for essential purposes – should, in most cases, prove more stringent than the previous travel restrictions and ought, therefore, to lead to a reduction in travel across the country;

(d) As far as the vaccination programme was concerned, ongoing consideration was being given to the sequence to be adopted, with a view to ensuring that the maximum number of those at risk received protection as soon as possible. This consideration included examination of the approach to be taken once the initial categories of those most at risk (care home residents and the health and care workforce) had been vaccinated;

(e) Any policy decision to redirect scarce supplies of vaccine from the most clinically vulnerable to apparently healthier people (such as most teachers) would raise serious issues of clinical ethics: competing pressures were likely to be hard to balance. It might be sufficient, at this stage, to signal that consideration would be given to whether, and to what extent, it might be possible to achieve vaccination of school and childcare staff as a priority, while respecting the Government’s overall duty to vaccinate the most vulnerable first, in line with JCVI recommendations;

(f) It would be important to ensure that NHS capacity was maximised. Although there were, as yet, no final year medical and nursing students who could be drafted into active service (unlike in spring 2020), a number should

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become available from February or March, if required. Capacity in ICU was currently sufficient, but there were growing pressures on bed numbers elsewhere in hospitals, and intensive work was under way to match resources to demand;

(g) Visible enforcement of the new range of restrictions would be vital, especially given the negative effect on compliance of seeing people fail to observe restrictions (there were, for example, still a number of tourists to be seen in Highland beauty spots). While this was an operational decision, it might be helpful if the police targeted main roads into and out of known tourist areas;

(h) Mr Yousaf undertook to speak to the Chief Constable to ensure that enforcement actions were being taken forward with due speed and rigour, based on a 'maximalist' approach. and it was likely that this would be met with a call for increased police resources. In addition, Environmental Health Officers, with appropriate police support, would need to enhance their monitoring of compliance with local restrictions;

(i) A degree of realism would be required in considering the likely effectiveness of enforcement actions: however necessary Fixed Penalty Notices were, for example, they would not in themselves increase broader compliance, which would depend on maintaining public understanding and social consensus;

(j) Levels of business support remained at the upper margins of what was possible using resources such as the Strategic Framework Business Fund, which was intended to help businesses which had been required to close by law or to make significant changes in their operations due to COVID-19 restrictions. It was unlikely that further funding could be found within current budgetary constraints, and existing resources must therefore be marshalled and distributed as efficiently as possible;

(k) Given the importance of outdoor exercise to people's continued mental health, especially over winter when daylight was scarce, it was welcome that the new regulations would still recognise that exercise constituted a reasonable excuse to leave home. Marketing efforts aimed at improving mental health should focus on encouraging people to go outdoors, given the positive contribution of exercise to the wellbeing of particular groups such as vulnerable single people;

(l) Although it was regrettable that places of worship would need to be closed to the public, with very limited exceptions, the overriding need to ensure that as few people came into contact with each other as possible had left little choice in this matter, and strict requirements must now be imposed whatever the setting;

(m) The paper had suggested that young people aged between 12 and 18 might continue to gather in groups of up to three, drawn from three households, in recognition of the negative social impact of reducing young

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people's opportunities to socialise, especially when conventional schooling was suspended. However, one of the problems that had bedevilled previous sets of restrictions had been complexity and lack of awareness, leading to lower levels of compliance. It would therefore seem sensible to move to a simple 'two-from-two' rule which would apply to anyone aged 12 or over, despite the social harm this might occasion among older school pupils;

(n) Simplicity in public messaging would, as ever, be vital, especially at a time when worsening conditions required near 'lockdown' restrictions to be understood and observed as conscientiously as possible. Messaging should, therefore, err on the side of caution, so as to convince as many as possible of the gravity of the current situation – despite the prospect of mass vaccination over the coming period;

(o) Given that structured remote learning was likely to remain the norm for the great majority of school pupils – probably until the spring – it would be all the more important to ensure that it was introduced with positive messaging. It would also be vital to ensure that a return to school – once it was safe to do so – took place in a planned and orderly manner: a 'stop-start' approach would benefit neither pupils nor their teachers;

(p) While international travel was plainly undesirable (and in fact illegal, with a few defined exceptions), levels of traffic at major airports suggested that this was not, at present, a major problem: for example, in December 2020 Edinburgh Airport had seen only five per cent of the previous year's traffic levels. Despite low current traffic levels, every effort must be made to ensure that the risk of importation of the virus was minimised still further, if possible;

(q) Levels of compliance with existing restrictions among manufacturing and construction firms were still seen to be high, and it seemed reasonable that they should be allowed to continue their work at present, although it would be helpful to re-emphasise clearly the need for extreme caution in the face of the new variant, and to ensure that businesses were aware that rules were under close review and that further change could not be ruled out;

(r) In view of the risks involved, the proposals contained in the paper to ensure that further classes of premises, service providers, and non-essential retail (such as showrooms, cosmetic and aesthetic clinics, and ski centres) were shut seemed necessary, despite the economic harm this would cause. Although the Nevis Range and Cairngorm ski centres were already closed, the three other main centres were still open, and all would require government support, given that their main season only ran until April;

(s) It would be helpful to ensure clarity regarding travel for exercise, and the sorts of exercise that would be permitted: for example (unlike in spring 2020), golf would be permitted, provided the 'two-from-two' limit and travel limits were observed, although clubhouses would be closed (under the hospitality rules);

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(t) The fact that travel for exercise would continue to be permitted up to five miles beyond the 'home' local authority boundary was intended, in part, to ensure that people spread out, and did not congregate *en masse* in relatively small areas, such as Arthur's Seat in Edinburgh or Glasgow Green;

(u) More broadly, public messaging must be carefully calibrated to minimise the perception of a lack of alignment between different classes of activity, and to ensure that people understood why particular restrictions were required in Scotland at this time (whatever the position might be elsewhere in the UK);

(v) It would be important to ensure that people were aware of the support packages that were in place to assist them if they were affected by the new measures – this covered both business support and support for individuals, especially the most vulnerable or those whose mental or physical health was most likely to suffer faced with renewed 'lockdown' conditions;

(w) Continued engagement with local authorities, faith leaders, business organisations, the third sector, and others who would be most affected by the new measures would remain essential; Mr Swinney and Ms Campbell were due to meet local authority representatives later that day;

(x) In presenting the new measures, it would be helpful to ensure that public messaging made clear the fact that guidance was now backed by legal requirements which would be enforced strictly wherever required;

(y) The reference, in paragraph 18 of the paper, to "*expert advice to take preventative action on the precautionary principle*" was inaccurate, since the precautionary principle was a term of art with a specific technical meaning which was not implied here. The text should instead have referred to "*expert advice to adopt a cautious, preventative approach*" to guide the Government's work in taking forward the new measures.

21. **Cabinet agreed:**

(a) The recommendations for additional emergency measures to strengthen protection in Level 4 areas, as set out in the paper at Annex B (except that young people aged between 12 and 17 should observe a 'two-from-two' limit in outdoor gatherings, rather than 'three-from-three');

(b) That all schools should be required to continue to use remote learning (except for vulnerable children and children of key workers) until (at the earliest) 1 February;

(c) That the additional measures to be announced by the First Minister in the Parliament that afternoon should remain in place for an initial period of at least three weeks, with a review after a fortnight;

(d) To delegate to the First Minister all other decisions that might be required in advance of her planned statement to the Parliament later that day;

(e) That all protective measures applicable in all parts of Scotland should be kept closely under review and that further changes in the short term should not be ruled out;

(f) Pursuant to (e) above, to delegate to the First Minister and Mr Swinney the responsibility for any further decisions that might be required, should there be a material change of circumstances in any local authority area, or nationally, before the next planned review of the protective measures in place;

(g) That all necessary actions should be put in hand to ensure that the required changes to regulations, guidance and advice were in place so that the additional emergency measures described above could be announced by the First Minister in the Parliament that afternoon, and publicised, implemented, and enforced as planned; and

(h) That the results of the wider review of *Scotland's Strategic Framework* should be reported to Cabinet later in January, taking account of the emergency measures described in the paper.

(Action: First Minister; Deputy First Minister and Cabinet Secretary for Education and Skills; DG Constitution and External Affairs; Chief Medical Officer)

Parliamentary Business (Paper SC(21)01)

22. Mr Dey noted that business in the Parliament later that day would be in hybrid form and that timings would be flexible, reflecting the emergency recall of the Parliament that the First Minister had requested and to which the Presiding Officer had agreed.

23. **Cabinet agreed** the planned business in the Parliament for the weeks commencing 11, 18 and 25 January 2021, subject to any further changes that might be required.

(Action: Minister for Parliamentary Business and Veterans)

SCANCE (Paper SC(21)02)

24. The First Minister introduced the SCANCE paper (SC(20)156). In discussion of current issues, Cabinet's attention was drawn to the following matter:

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Cabinet Secretariat
January 2021