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RESTRICTED HANDLING

SC(20)5th Conclusions

SCOTTISH CABINET

MINUTES OF MEETING HELD IN BUTE HOUSE, EDINBURGH
AT 9.30 AM ON TUESDAY, 4 FEBRUARY 2020

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 the Rural Economy
	Derek Mackay MSP	Cabinet Secretary for Finance, Economy and Fair Work
	Michael Matheson MSP	Cabinet Secretary for Transport, Infrastructure and Connectivity
	Shirley-Anne Somerville MSP	Cabinet Secretary for Social Security and Older People
In Attendance:	Leslie Evans	Permanent Secretary
	LPP	LPP LPP
	Ash Denham MSP	Minister for Community Safety
	Graeme Dey MSP	Minister for Parliamentary Business and Veterans (<i>part of meeting only</i>)
	Clare Haughey MSP	Minister for Mental Health
	Ben Macpherson MSP	Minister for Europe, Migration and International Development
	David Rogers	Director of Constitution and Cabinet
	John Somers	First Minister's Principal Private Secretary
	James Hynd	Head of Cabinet Secretariat
	Name Redacted	Permanent Secretary's Principal Private Secretary
	Ross Ingebrigtsen	Special Adviser
	Liz Lloyd	Special Adviser
	Stuart Nicolson	Special Adviser
	Julie Grant	First Minister's Official Spokesperson
	Chris Birt	First Minister's Policy and Delivery Unit
	Tabitha Stringer	PS/First Minister
	NR	DPS/Minister for Parliamentary Business and Veterans
	NR	Cabinet Secretariat
		Cabinet Secretariat

OFFICIAL-SENSITIVE**Apologies**

1. Apologies were received from Ms Freeman, Ms Hyslop, Mr Russell and Mr Yousaf. They were represented by Ms Haughey, Mr Macpherson, Mr Dey and Ms Denham, respectively.

Minutes of Meeting held on 28 January 2020

2. The minutes of the meeting held on 28 January (SC(20)4th Conclusions) were approved.

Parliamentary Business (Paper SC(20)18)

3. Mr Dey outlined the planned business in the Parliament during the weeks commencing 3, 17 and 24 February and 2 March, as set out in the tables in Annex A of paper SC(20)18.

4. The Stage 1 debate on the Period Products (Free Provision) (Scotland) Bill, introduced by the Labour MSP Monica Lennon, was due to take place on the afternoon of 25 February. Flaws in the Bill meant that it seemed likely that the Government would oppose it in its current form. It was noted in discussion that it would be important for Ministers to emphasise that there was no disagreement in principle to the objectives espoused by the Bill, and that a range of work was in train to help eliminate period poverty. Ms Campbell would continue to engage with Ms Lennon.

5. **Cabinet agreed** the planned business in the Parliament for the week commencing 24 February, subject to any changes that might be required.

(Action: Minister for Parliamentary Business and Veterans)

SCANCE (Paper SC(20)19)

6. The First Minister introduced the SCANCE paper (SC(20)19). In discussion of current issues, Cabinet's attention was drawn to the following matters:

Early Learning and Childcare

7. In relation to the item in paper SC(20)19 concerning the introduction of funded early learning and childcare (ELC) for children born between August and December who deferred their school start date, Mr Swinney said that there was an expectation among many (including supporters of the 'Give Them Time' campaign) that this new entitlement would be introduced in August 2020.

8. Such a rapid delivery timetable would, however, be likely to prevent local authorities from meeting their existing duty to provide 1,140 hours of funded ELC from the same date, and it seemed preferable to aim for August 2021 instead for changes to ELC entitlements for children who had deferred school entry.

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9. **Cabinet agreed** that, in light of the risk to the existing delivery target, the new entitlement for pupils who deferred school entry should be scheduled for introduction no later than August 2021 (while legislating for it during the current Parliamentary session). This timetable should be shared with stakeholders as soon as possible.

(Action: Deputy First Minister and Cabinet Secretary for Education and Skills; Early Learning and Childcare Programme Directorate)

Independent Care Review

10. Mr Swinney referred to the item in paper SC(20)19 concerning the final report of the Independent Care Review, which was due to be published the following day. The Review had taken an innovative approach, and it had focused primarily on listening to and learning from those with experience of care, reflecting their own voice wherever possible. The Review's conclusions did not follow the format typically adopted in independent review reports: its focus was not on a set of transactional recommendations about the care system for the Government and its partners, but rather on describing the type of experience that those in care deserved to have, built on stable, nurturing, and loving relationships.

11. The report's tone and content were compelling – particularly in light of the many, powerful contributions from care experienced individuals – and it was likely to make a strong contribution to the debate about how to improve care services in Scotland.

12. In addition to setting out a clear vision for the future, the report provided a highly credible economic analysis of the annual cost of looking after children in care, estimated at some £942 million, which needed to be considered alongside the notional amount of £732 million lost to Scotland's economy every year because care experienced people had lower average incomes than the wider working population.

13. In measuring the outcomes of the Review, improving the wellbeing of care experienced people would, however, be as important as any direct economic benefits. The First Minister had outlined similar themes in her speech to the Wellbeing Economy Alliance conference in January 2020, when she had set out the Scottish Government's aspiration to build a wellbeing economy in Scotland.

14. Delivering a new model of care would require fundamental change over the coming decade. It would, in particular, require a transformation in the culture of care, which would go far beyond the necessary changes to systems and processes.

15. In discussion the following points were made:

(a) Stakeholder bodies such as Who Cares? Scotland would have a critical role to play in developing a delivery plan in response to the report. Some other organisations might need help interpreting the report, given its innovative approach and format. There was a risk that some might respond to the report simply by demanding additional funding, without considering what else they would need to do to bring about the transformational change called for by the Review;

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(b) The Review called for fewer people to be placed into residential care, including secure care. If successful, this should lead, over time, to a significant reallocation of resources. The business models of a number of organisations, such as those currently involved in the provision of residential care, would, in turn, need to adapt in response to the evolution of a new approach to care in Scotland;

(c) A good example of an innovative approach was provided by the children's charity, Aberlour, which already provided wrap-around support aimed at increasing school attendance, well-being and levels of achievement. This strategy was proving effective, and it illustrated how additional support in a family setting, as advocated by the Review, could be transformational in its effects.

(Action: Deputy First Minister and Cabinet Secretary for Education and Skills; Children and Families Directorate)

Scottish Budget

16. Mr Mackay said that the package of documents that would accompany publication of the Scottish Budget 2020-21 on the afternoon of Thursday, 6 February was nearing completion.

17. As mentioned at the previous week's meeting of the Cabinet (*SC(20)4th Conclusions refers*), the significant, £61 million reduction in the Capital position reflected in consequentials flowing from the UK Winter Supplementary Estimates for 2019-20 was unprecedented at this late stage in the financial year. Mr Mackay intended to raise this point directly with the Chief Secretary to the Treasury. In the short term, HM Treasury had indicated that this could be addressed through additional flexibilities and re-profiling.

2019 Novel Coronavirus

18. In relation to the item in paper SC(20)19 concerning the 2019 Novel Coronavirus (2019 N.Co-V – *SC(20)4th Conclusions refers*), Ms Haughey informed Cabinet that the outbreak had, to date, resulted in over 325 deaths in China. The first death had also been seen in Hong Kong.

19. Two cases had been confirmed in the UK, but none thus far in Scotland, and there were no UK fatalities at this point. Earlier that day, a patient (who had recently returned from China) had been sent to Monklands Hospital, Lanarkshire, for tests. The Scottish Government Resilience Room continued to monitor the situation, and preparations remained in hand, based on a reasonable worst case scenario of a situation similar to an influenza pandemic.

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Health Statistics

24. In relation to the item in paper SC(20)19 concerning health statistics, Ms Haughey said that the monthly performance against the four-hour Accident and Emergency (A&E) target for December 2019 had been the lowest on record (at 82.6 per cent for core sites), with the number of 12-hour waits that month the highest on record. Performance in December had been significantly affected by a range of pressures including high acuity, the highest ever number of attendances and admissions, unprecedented levels of delayed discharge, and the comparatively early onset of influenza and respiratory conditions. Placing these figures in context, A&E performance in England in December had been less than 70 per cent.

25. Over the winter, various measures were in place to help support the NHS Boards facing the greatest challenges (including Greater Glasgow and Clyde, Lanarkshire and Lothian). An enhanced reporting process had been put in place, with all Boards (including the Scottish Ambulance Service and NHS24) now required to report three times daily on pressure points within the system.

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Deaths of People Experiencing Homelessness

27. In relation to the item in paper SC(20)19 concerning deaths among people experiencing homelessness, Ms Campbell indicated that the statistics, which were embargoed until Wednesday, 5 February, concerned the deaths of homeless people, who were vulnerable and frequently had complex needs.

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28. Although homelessness was not, in general, the direct cause of death, the new statistics should serve as a timely reminder of why preventing homelessness and transforming temporary accommodation must remain a priority, in line with the multi-agency *Ending Homelessness Together Action Plan* (published jointly by the Scottish Government and COSLA in November 2018).

29. The new figures were likely to be viewed alongside the previous week's statistics on homelessness, health inequalities and the Scottish Index of Multiple Deprivation (*SC(20)4th Conclusions refers*): taken together, they should add impetus to ongoing work to tackle underlying problems.

30. It was noted in discussion that reductions in the UK welfare budget over recent years had exacerbated the problems connected with homelessness in all parts of the UK. There were also connections to be made with the conclusions of the Independent Care Review and its implications for the future care of Scotland's most vulnerable children and young people (*see above*).

Child Disability Payment

31. In relation to the item in paper SC(20)19 concerning the development of the new Child Disability Payment, Ms Somerville said that the publication of the draft Disability Assistance for Children and Young People (Scotland) Regulations would mark a significant milestone in what would be the first devolved disability payments to be delivered by Social Security Scotland.

32. The Regulations set out the detail of how devolved powers would be used to make meaningful changes to disability payments. For children and young people, the upper age limit for assistance would be raised to eighteen, so as to minimise the impact on families during the transition from child to adult services. In addition, Child Winter Heating Allowance worth £200 would be provided to families with the most seriously disabled children.

33. Some had called for a mobility component to be introduced to Disability Assistance for Older People, but analysis by officials had shown that such a measure could cost £540 million per year, which would not be affordable.

UN Climate Change Conference (COP26)

34. Ms Cunningham updated Cabinet on planning for the UN Climate Change Conference, the 26th Conference of the Parties (COP26), which would be hosted by the UK Government (in partnership with Italy) in Glasgow between 9 and 20 November 2020 (*SC(20)3rd Conclusions refers*).

35. The Prime Minister had released a statement on 31 January, confirming that the former Minister and MP, Rt Hon Claire O'Neill, would no longer serve as President of COP26. Ms O'Neill reply to the Prime Minister of 3 February had been critical both of the Prime Minister and of the UK Government's preparations for COP26. The letter had also unjustly criticised the Scottish Government, following its decision to book the Glasgow Science Centre as a base for use during the Conference.

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36. In discussion the following points were made:

(a) Over coming months, the UK Government would need to collaborate much better with the Scottish Government, Police Scotland, Glasgow City Council and other local partners to ensure that the COP26 conference was a success, setting aside any political differences to focus on working constructively across a wide range of organisations to deliver an event which was not only safe and secure, but which would live up to international expectations;

(b) This would also require the UK Government to confirm, as soon as possible, its commitment to ensuring that adequate operational funding was in place for the event – including in critical areas such as policing, about which Mr Mackay had recently written to the Chancellor of the Duchy of Lancaster (*SC(20)3rd Conclusions refers*);

(c) Ms O'Neill's criticism of the Scottish Government for having booked the Glasgow Science Centre for the duration of COP26 was not supported by the facts: in November 2019, all parties had been working under the assumption that official COP26 activities would be confined to land north of the Clyde, and the Scottish Government had therefore entered into a contract to use the Glasgow Science Centre (south of the Clyde) as a base for its own activities during COP26. There had, at the time, been no indication that the UK Government might also wish to book the Science Centre for use as part of the COP26 site.

37. **Cabinet agreed that:**

(a) The First Minister should write to the Prime Minister to assure him of the Scottish Government's continuing commitment to support the UK's collective efforts to deliver a successful COP26 and, in the longer term, to adopt a collaborative approach in working towards net zero carbon emissions;

(b) As a token of goodwill, the First Minister might also consider proposing that Ms Cunningham should attend relevant meetings of the UK Cabinet and Cabinet Sub-Committee on climate change. This should improve operational co-ordination in advance of COP26 and would helpfully illustrate a joint inter-governmental commitment to delivering a successful summit.

(Action: First Minister; Cabinet Secretary for the Environment, Climate Change and Land Reform; Energy and Climate Change Directorate)

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Malawi Presidential Elections

40. Mr Macpherson said that, the previous day, Malawi's constitutional court had annulled the result of the Presidential election held in May 2019 and had ordered new elections to take place within 150 days.

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Future Environmental Governance (Paper SC(20)20)

45. Ms Cunningham introduced paper SC(20)20 which invited Cabinet to agree to the creation of a new public body to provide for future environmental governance in Scotland following the end of the transition period after the UK's departure from the EU, and that the new body should have a proportionate set of enforcement powers. There was broad consensus in Scotland that domestic environmental governance arrangements were needed to protect environmental standards, and Scottish Ministers had placed on record a strong commitment to maintaining EU standards.

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46. There appeared to be a strong likelihood that the establishment of independent environmental governance bodies such as this might become an obligation for all parts of the UK under an eventual trade agreement with the EU: that at least seemed to be the EU's negotiating objective, to which the UK Government appeared unlikely to object.

47. It was possible that creation of the new environmental governance body might cause some anxiety among Scottish public bodies and regulated firms about the effect this would have on them. It would be vital to emphasise that the new body would not put in place a new layer of regulation, nor would it provide a new appeal route for regulatory decisions.

48. The new body's role would instead be limited, but necessary, since it would only carry out functions currently carried out by EU institutions. To provide the necessary legal cover for this, legislative provisions would be introduced to ensure that the EU's four environmental principles continued to apply to policy and legislation for the Scottish environment.

49. Although the new body would not introduce a new layer of regulation, it would nevertheless be tasked with ensuring dynamic alignment with future changes in EU environmental regulation: the regulatory landscape would not be 'frozen' as at the UK's exit date, but would instead adapt over time so as to maintain EU standards in Scotland (with a view to future re-accession). The new body would thus form a specialised component in a much larger debate about Scotland's future place in Europe.

50. The new body, which would be established to operate independently of Scottish Ministers and the Scottish Parliament as a Non-Ministerial Department, with a governing board. This approach had clear advantages over the governance model chosen in England, where the Office for Environmental Protection was to be set up as a Non-Departmental Public Body (which would not be independent of the UK Government).

51. The new body would seek to prioritise a small number of cases, in line with the volume of infractions seen at present; it would aim to pursue those cases where there was a real potential for better outcomes and, specifically, the protection and improvement of environmental standards.

52. The new body would be specifically established to replace the EU's regulatory functions: it would not operate as an 'environmental court', despite calls from some campaigning organisations for such a body. It would also be right to remain wary of calls from some for a rigid framework of targets and enforcement, since this would be inflexible and counter-productive. Instead, it would operate through remedy and mediation and should work to resolve, wherever possible, any concerns about the application of environmental law without recourse to formal redress. The new body would be tasked with collaborating effectively with other UK environmental governance bodies, while maintaining Scotland's distinctive approach (and alignment with the highest EU standards).

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53. Because of the need to ensure that new arrangements were in place by 31 December 2020, it might be necessary to operate the new body on a shadow basis at first until the full suite of legal powers was in place.

54. In discussion the following points were made:

(a) The principle of dynamic alignment was a vital one and would ensure that environmental principles and regulations were not simply set in aspic at the moment of EU Exit but continued to keep pace with the highest international standards;

(b) There was a danger that the new body would be seen as creating new layers of bureaucracy and compliance burdens. This was not the intention, and it would therefore be all the more important, in presentational terms, to underline that the new body would merely replace the role currently played by the EU institutions in ensuring that public authorities were correctly implementing environmental law.

55. **Cabinet agreed:**

(a) To the creation of a new public body, in the form of a Non-Ministerial Department, to provide for future environmental governance in Scotland following the end of the current transition period following the UK's departure from the EU; and

(b) That the new body should have proportionate enforcement powers.

(Action: Cabinet Secretary for Environment, Climate Change and Land Reform; Environment and Forestry Directorate)

Any Other Business

56. None.

Cabinet Secretariat
February 2020