

SCOTTISH CABINET

MINUTES OF MEETING HELD IN ST ANDREW'S HOUSE, EDINBURGH
AT 9.30 AM ON TUESDAY, 5 MAY 2020

Present:	Rt Hon Nicola Sturgeon MSP John Swinney MSP Aileen Campbell MSP Roseanna Cunningham MSP Fergus Ewing MSP Kate Forbes MSP Jeane Freeman MSP Fiona Hyslop MSP Michael Matheson MSP Michael Russell MSP Shirley-Anne Somerville MSP Humza Yousaf MSP	First Minister Deputy First Minister and Cabinet Secretary for Education and Skills (*) Cabinet Secretary for Communities and Local Government (*) Cabinet Secretary for the Environment, Climate Change and Land Reform (*) Cabinet Secretary for Rural Economy and Tourism (*) Cabinet Secretary for Finance (*) Cabinet Secretary for Health and Sport Cabinet Secretary for the Economy, Fair Work and Culture (*) Cabinet Secretary for Transport, Infrastructure and Connectivity (*) Cabinet Secretary for the Constitution, Europe and External Affairs (*) Cabinet Secretary for Social Security and Older People (*) Cabinet Secretary for Justice (*)
In Attendance:	Leslie Evans [Redacted] Graeme Dey MSP Dr Gregor Smith Dominic Munro David Rogers Andrew Watson John Somers James Hynd Douglas McLaren Liz Lloyd Callum McCaig Stuart Nicolson Aileen Easton Chris Mackie Sinéad Power Tabitha Stringer <div style="border: 1px dashed black; padding: 2px; display: inline-block;">Name Redacted</div>	Permanent Secretary Minister for Parliamentary Business and Veterans (*) Interim Chief Medical Officer Director for Fair Work, Employability and Skills (*) Director of Constitution and Cabinet (*) Director of Budget and Sustainability (*) First Minister's Principal Private Secretary Head of Cabinet Secretariat Deputy Director, Public Spending (*) Special Adviser Special Adviser (*) Special Adviser (*) First Minister's Official Spokesperson (*) 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 28 April 2020

1. The minutes of the meeting held on 28 April (SC(20)16th Conclusions) were approved.

COVID-19: Coronavirus Update (*oral update*)

2. The First Minister noted that the publication discussed at the previous week's meeting of the Cabinet (*SC(20)16th Conclusions refers*) was due for publication that morning, under the title *Coronavirus (COVID-19): framework for decision-making – further information*.

3. The paper, a draft of which had previously been circulated to Cabinet^[Redacted], described the work that was being taken forward to prepare for careful and gradual changes to the current lockdown restrictions. It also set out further information about the challenges faced, including the estimated reproduction rate of the virus (R_0) in Scotland, and provided illustrative examples of the steps that might form part of initial changes to the lockdown restrictions, when it was safe to do so

4. At present, the weight of evidence continued to indicate that there was little, if any, room for changing the restrictions. There were estimated to be around 26,000 people in Scotland who were infective, and R_0 lay somewhere between 0.7 and 1.0 (with a best estimate of 0.8), which was insufficiently low to be able to say, with confidence, that the outbreak was under control or to make anything other than marginal changes to restrictions. It was also possible that R_0 was slightly higher than in the rest of the UK, possibly because of a lagging effect.

5. The new paper included a chart illustrating the risk that would arise if, for example, primary schools were to be re-opened too soon, based on preliminary evidence from Denmark. The chart showed that there was an appreciable risk that fully re-opening all primary schools and nurseries in May would be likely to result in overwhelming pressure on hospital capacity over the following two months or so, if R_0 rose above one and case numbers began to rise exponentially.

6. The current position of the CMO Advisory Group on COVID-19 was that there was little room for manoeuvre. It might, however, be possible to make some small changes in the near future, such as an increase in permitted outdoor activities, such as daily exercise, which would at least indicate a positive direction of travel. It was hoped that this might encourage members of the public to maintain their compliance with the wider regime until the time was right for more meaningful relaxation of a wider range of restrictions, although it would be important, in presenting any changes, to prevent any mixed messages which might reduce public commitment.

7. Although the paper would state that, subject to further analysis of the most up-to-date evidence, no changes to the restrictions were likely at the next statutory review date of Thursday, 7 May, the First Minister intended to make clear that some changes might be introduced before the following review date of 28 May, but only if this was judged to be safe in the Scottish context.

8. The Scottish Government remained committed to a 'Four Nations' approach wherever that made sense for Scottish circumstances, since all would benefit from consistency in managing the emergency. Work with the other Devolved Administrations and the UK Government therefore continued: a call between the 'Four Nations' Health Ministers was due to take place later that day, and a full Cabinet Office Briefing Room (Ministerial) meeting was scheduled for Friday, 8 May, in which the First Minister would take part.

9. Each of the four Chief Medical Officers had expressed the view, in recent meetings, that the time was not yet right to make substantive changes to the restrictions. In England, only two out of the five tests that the UK Government had set had been passed to date, and the situation appeared similar in Wales.

10. It was noted in discussion that there was a lack of information about what the UK Government was planning, despite repeated requests for updates, and this was a source of growing concern. Notwithstanding the advantages of UK-wide alignment (provided the evidence supported it), Scottish Ministers had an overarching responsibility to reach evidence-based decisions that were right for Scotland, and that Scottish Ministers' legal responsibilities under the relevant legislation could not be outsourced.

11. **Cabinet:**

(a) Agreed that, based on the evidence to date, the time did not appear right for any substantive relaxation in lockdown restrictions in Scotland; and

(b) Delegated to the First Minister the formal decision on the next review of lockdown restrictions, which she was due to make and announce on 7 May, based on the available evidence, in line with the Assessment Framework contained in *COVID-19: A Framework for Decision Making*, published on 23 April, and as required under The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.

(Action: First Minister; Deputy First Minister and Cabinet Secretary for Education and Skills; Cabinet Secretary for Health and Sport; DG Constitution and External Affairs; Interim Chief Medical Officer; COVID-19 Director)

12. The First Minister then invited the Interim Chief Medical Officer and Ms Freeman to provide Cabinet with an update on the progress of the COVID-19 pandemic and the work under way to counter its effects.

13. Dr Smith informed Cabinet that, as at 9 a.m. on 5 May, there were 12,437 confirmed cases of COVID-19 infection in Scotland (an increase of 171 on the previous day), compared with 10,721 the previous week (*SC(20)16th Conclusions refers*). There continued to be an encouraging fall in the number of COVID-19 patients in Intensive Care Units; numbers in general wards were slower to fall, but this was thought to reflect the relatively long length of stay required by most COVID-19 patients.

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14. The total number of confirmed deaths in hospital as a result of COVID-19 now stood at 1,620 (an increase of 44 from the previous day), compared with a cumulative total of 1,332 deaths the previous week.

15. General hospital capacity was now at 64 per cent, and in some cases the figure stood at 80 per cent. As a result, it was hoped that some non-COVID patients might be able to return to hospital for procedures previously deferred as a result of the emergency.

16. It was noted in discussion that it would be helpful to have a regular update on the number of new hospital admissions with COVID-19.

17. Ms Freeman updated Cabinet on work to put in place the 'test, trace, isolate and support' (TTIS) programme. Operational leads were already in place for increasing testing capacity and contact tracing, for which recruitment was planned.

18. Putting in place effective arrangements for isolation and support for those who tested positive would also be critical to the credibility of the TTIS programme and, hence, the level of compliance: like other aspects of the response to the pandemic, its success would depend on public trust and acceptance.

19. It was noted in discussion that significant efforts would be required if the necessary 2,000 or so staff required for contact tracing were to be found by the end of May. External recruitment would commence once it had been established how many existing Health Protection Scotland staff would be available to be re-assigned. Community surveillance would also continue to be a crucial part of the testing programme, in order to pick up any further local outbreaks, and it would be essential to have sufficient staff available for this too.

20. **Cabinet agreed** that as much as possible should be done in preparation for the intensified testing, tracing and support work which would be required as soon as the TTIS programme got under way, including drawing up a critical path for the necessary recruitment process with a target date for completion of 31 May.

(Action: Cabinet Secretary for Health and Sport; DG Health and Social Care; Interim Chief Medical Officer; Chief Nursing Officer Directorate)

21. Ms Freeman said that she had spoken twice the previous day to Directors of Public Health about their expanded responsibilities in relation to care homes (*SC(20)15th and 16th Conclusions refer*), as well as the additional work being carried out by the Care Inspectorate. Where positive test results were requiring staff to go home, it had been reported that some care home providers appeared reluctant to accept NHS Boards' offer of replacement staff. There were over 300 staff who had been identified to work in care homes, if required, and if providers did not accept them, it might, as a last resort, be necessary to consider some form of emergency legislation.

22. Cabinet also considered issues arising across different sectors:

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- (a) There was dialogue with the UK Government on school education. It appeared, based on a call between Mr Swinney and the Secretary of State for Education, that there was considerable caution (both in the Department for Education and among teaching unions) about the possibility of re-opening schools in England in the near future, despite media and political pressure to relax current restrictions;
- (b) Given that responsibility for education was devolved, and the differences between Scotland and England (such as term dates), there was no reason why the UK Government's decisions on schools should have particular resonance in Scotland;
- (c) Recent discussion among members of the Education Recovery Group had centred on options including devising a chronological list of priority groups who would return to school in an agreed order (pupils in transition from P7 to S1 or from Early Years to P1) and recommencing schooling in blocks of a few days at a time, to allow for increased physical distancing and deep cleaning of school premises between groups. These were described further in the paper published that day;
- (d) It would be helpful to provide greater clarity on schools, in particular, before the end of the summer term and, to that end, it would be helpful to work with stakeholders, through the Education Recovery Group, to agree what might usefully be said prior to the next following review date (28 May);
- (e) Where problems arose in remote areas, such as the recent cluster of COVID-19 cases in a care home in Skye, the wider national resilience network needed to be in place to assist local responders, and it would be useful to ensure that lessons were learned from this case that could be applied more widely over the course of the emergency;
- (f) Work was in hand on how to restart operations safely in each significant sector of the economy. It had been identified early on that the confidence of Scottish workers, customers and employers would be a prerequisite for success in any plan to restart economic activity, and a collaborative approach involving all interested parties had been an essential element from the outset. Draft UK guidance on safe working with physical distancing was helpful as a starting point, but development of tailored guidance for Scottish businesses would need to be informed by structured dialogue with employers, business organisations, the trade unions and STUC, local government, and other stakeholders;
- (g) A second set of Scottish Government guidance for the construction sector was nearing completion, and the Minister for Business, Fair Work and Skills had recently held a highly positive meeting with trade unions and business representatives about issues arising for manufacturers. Guidance for the retail sector was under development with input from the Union of Shop, Distributive and Allied Workers;

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(h) Although the creation of sectoral guidance would be essential, there were wider issues to consider in relation to public transport, travel, schooling, childcare, and powers and enforcement. Restarting work across all parts of the economy would raise some novel and potentially difficult issues, such as legal liability in case of COVID-19 infection, and about where responsibility lay for different aspects of workplace safety (reserved and devolved). There would also be questions about the required physical adaptations to the workplace and other necessary operational changes (such as working hours, shifts, transport, and home working);

(i) Councils and other regulators (such as the Health and Safety Executive) would have a role in relation to the environment, public health, trading standards, and health and safety, and there would need to be some assurance that they had the necessary capacity to take on this work;

(j) There were three broad categories of workplace: those where essential work was continuing; those which had been required to close at the start of 'lockdown'; and those which would have been permitted to stay open but whose owners had chosen to close. The middle category of businesses which had chosen to close, but which might now wish to re-open, subject to ensuring the safety of their workforce, raised some significant issues, including liability for staff health and safety;

(k) In relation to businesses which had taken a voluntary decision to close, in particular, there was likely to be a good deal of uncertainty, and it would be helpful to dispel this as soon as possible. To this end, it would be necessary to have a clear, structured picture of what steps would need to be taken (and by when) to ensure safe re-opening, what workplace measures must be put in place, and also which legal framework(s) would apply, and what form of enforcement would be both proportionate and appropriate.

23. **Cabinet agreed** that Ms Hyslop should provide the First Minister with a paper on the issues which would be raised by the process of restarting work. This should cover practical implementation issues, the legal framework (including the desirability or otherwise of extending Regulations to those workplaces which had closed voluntarily) and possible monitoring and enforcement arrangements. The paper should address these issues at both the strategic and sectoral levels.

**(Action: Cabinet Secretary for Economy, Fair Work and Culture;
Economic Development Directorate)**

Parliamentary Business (Paper SC(20)51)

[Removed]

25. **Cabinet agreed** the planned business in the Parliament for the weeks commencing 5, 11 and 18 May, subject to any further changes that might be required to take account of the effects of the response to the COVID-19 pandemic.

[Removed]

SCANCE (Paper SC(20)52)

26. The First Minister introduced the SCANCE paper (SC(20)52). In discussion of current issues, Cabinet's attention was drawn to the following matters:

Support for the Higher Education Sector

27. Mr Swinney said that the support package the UK Government had recently announced for the higher education sector had received a lukewarm reception from universities, who were concerned that it did not include any consequential funding for Scottish institutions. The Scottish Government intended to announce £75 million additional capital for university research in the coming days, as the first step in the Scottish Government's higher education sustainability plan.

**(Deputy First Minister and Cabinet Secretary for Education and Skills;
Advanced Learning and Science Directorate)**

Health Staffing

28. Ms Freeman updated Cabinet about changes to Senior Civil Service staffing arrangements within the Health and Sport portfolio to take account of the ongoing COVID-19 emergency.

[Removed]

[Removed]

[Removed]

COVID-19 - Budget 2020-21: Overview and Reprioritisation (Paper SC(20)53)

38. Ms Forbes introduced paper SC(20)53 which invited Cabinet to note the updated 2020-21 Budget position and to endorse the range of actions necessary to support the Scottish Government's urgent response to the COVID-19 outbreak and maintain effective control over public finances. It also invited Cabinet to agree the principles for this work and to hold a series of bilateral meetings over the next two weeks to develop a programme of options for future Cabinet agreement.

39. While there would clearly be a range of further demands on funding in response to the crisis, it would be critical for the Scottish Government to keep its options on potential recovery pathways open, and to retain flexibility for future decisions.

40. The current forecast was for a potential [Removed] resource shortfall for 2020-21, consisting of around £500 million additional costs associated with the Government response to the COVID-19 crisis, [Removed]

41. The £3.5 billion of consequential funding that was expected to flow from UK Government COVID-19 announcements was only an estimate at this stage and would need to be confirmed. In addition, HM Treasury's approach to the scope for additional funding or fiscal flexibilities appeared to be hardening, and it was about to start a savings exercise across UK Government Departments which had the potential to generate late negative consequentials for the Scottish Budget.

42. To enable COVID-19-related spending and bring the projected Budget deficit back into balance, it would be necessary to reprioritise non-COVID-19-related spending plans. Ms Forbes planned to work closely with all portfolios on this reprioritisation exercise, beginning with a series of bilateral meetings over the next two weeks. This would facilitate a further discussion at Cabinet later in the month to consider detailed proposals. The financial position remained extremely challenging, and the exceptional circumstances would require Ministers to make some difficult decisions.

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44. Although final decisions had not yet been taken about how best to allocate Barnett consequentials of £155 million to local government, pending receipt of an assessment of the cost pressures councils were facing, which COSLA had agreed to provide, Ms Forbes intended to confirm, in answer to a topical question in the Parliament that afternoon, that local government would receive the full amount of the consequentials, which were due as a result of an additional allocation of £1.6 billion to English local authorities to help tackle COVID-19, which had been announced on 18 April.

45. In discussion the following points were made:

(a) It was right to await receipt of COSLA's assessment of cost pressures on individual councils before coming to a view on the distribution methodology for the consequentials of £155 million. In presenting this new allocation, it would be important to mention the £175.6 million of extra funding to local government that had already been committed, taking the total additional funding to councils for COVID-19 to £330.6 million;

(b) Initial indications were that local authorities were responding well to the demands of the crisis and were re-directing resources to meet demand effectively;

(c) The COVID-19 pandemic had highlighted that the current model of devolution was unable to bear a crisis of such magnitude, particularly in respect of its financial impact. If Scotland was to be better equipped to plan and respond to future crises, then devolved funding arrangements would need to be revised significantly, and there could be no return to 'business as usual' after the current crisis;

(d) The pandemic had resulted in a loss of income for some revenue-generating public sector organisations, such as Historic Environment Scotland (which was losing significant income as a result of the closure of visitor attractions), which meant that it would be difficult for them to comply with Public Sector Pay Policy for 2020-21;

(e) Ms Hyslop was holding regular meetings with the STUC to discuss workforce issues, including the campaign launched by the STUC on 1 May calling for employers and government to implement an immediate increase in the hourly rate of pay by at least £2 for all key workers in Scotland;

(f) It would be important to identify and maintain the positive changes that had been made in response to the COVID-19 crisis. For example, significantly improved outcomes had been achieved for the homeless, including rough sleepers, as a result of new measures put in place. If improvements such as these could be kept in place after the crisis had ended, there would be significant long term benefits for the economy;

[Removed]

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(h) The reprioritisation process would need to factor in the loss of income that would result from the COVID-19 crisis, including lower recovery levels for non-domestic rates;

(i) There might be merit in exploring the development of a programme of public works to support economic recovery, both to offer hope to the public and to help revive the construction sector;

(j) The reprioritisation exercise would need to avoid 'salami slicing' and instead be approached in a strategic way which identified innovative solutions.

[Removed]