

RESTRICTED HANDLING

SC(20)38th Conclusions

SCOTTISH CABINET

MINUTES OF MEETING HELD IN ST ANDREW'S HOUSE, EDINBURGH
AT 9.30 AM ON TUESDAY, 6 OCTOBER 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 (*)
	Fergus Ewing MSP	Cabinet Secretary for Rural Economy and Tourism (*)
	Jeane Freeman MSP	Cabinet Secretary for Health and Sport (*)
	Fiona Hyslop MSP	Cabinet Secretary for the 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	Permanent Secretary
	Rt Hon James Wolfe QC	Lord Advocate (*)
	Graeme Dey MSP	Minister for Parliamentary Business and Veterans (*)
	Mairi Gougeon MSP	Minister for Rural Affairs and the Natural Environment (*)
	Ben Macpherson MSP	Minister for Public Finance and Migration (*)
	Dr Gregor Smith	Interim Chief Medical Officer
	Ken Thomson	Director-General, Constitution and External Affairs (*)
	Dominic Munro	Director, Exit Strategy (*)
	David Rogers	Director of Constitution and Cabinet (*)
	Shirley Rogers	Director of Organisational Readiness (*)
	John Somers	First Minister's Principal Private Secretary
	James Hynd	Head of Cabinet Secretariat
	Andrew Bruce	Permanent Secretary's Principal Private Secretary (*)
	Alisdair McIntosh	Strategic Adviser, Outbreak Management (*)
	Liz Lloyd	Special Adviser (*)
	Stuart Nicolson	Special Adviser (*)
	Aileen Easton	First Minister's Official Spokesperson (*)
	Chris Mackie	FM Covid Briefing Unit (*)
	Sinéad Power	First Minister's Policy and Delivery Unit (*)
		Cabinet Secretariat (*)
		Cabinet Secretariat (*)
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(*) by tele-conference

Apologies

1. Apologies were received from Ms Cunningham and Ms Forbes. They were represented by Ms Gougeon and Mr Macpherson, respectively.

Minutes of Meeting held on 29 September 2020

2. The minutes of the meeting held on 29 September (SC(20)37th Conclusions) were approved.

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

3. The First Minister summarised the deliberations that had taken place over recent days about additional steps that might be necessary to tackle the COVID-19 pandemic, in light of its growing prevalence across all parts of Scotland.

4. In many respects, the decisions facing Cabinet were harder than at any point since the start of the outbreak. In March, there had been an imperative to proceed straight to a full lockdown, based solely on the degree of immediate harm that would otherwise be caused by the unchecked spread of COVID-19.

5. Now, however, although the need to counter the direct health harms caused by the virus remained the Scottish Government's first priority, Cabinet needed to balance this against a full analysis of the four, interrelated harms described in *COVID-19: A Framework for Decision Making* (published on 23 April), which also included non-COVID health harms and the societal and economic impacts of the pandemic. Cabinet must also take into account the financial resources available to the Scottish Government under current devolved arrangements.

6. Seven months into the pandemic, the impact on people's wellbeing, general societal fatigue, and the damage to the economy were combining to make it harder to contain and tackle the virus, despite the urgent need to do so. Indeed, in the Central Belt especially, prevalence levels were now far higher than over the summer, and immediate action was required to prevent an uncontrollable outbreak.

7. In most areas of Scotland, the rate of positive cases was well over the threshold of 50 cases per 100,000 population which was generally considered to represent a 'red alert' level (the all-Scotland average for the week ended 5 October stood at 93.5, with a peak of around 161 cases per 100,000 population in Greater Glasgow and Clyde) – it was worth bearing in mind that, when local restrictions were first applied in Aberdeen City over the summer, the weekly rate there had been around 20 cases per 100,000 population.

8. There had also been a shift towards an older section of the population, which had fed a sharp increase in the number of hospital admissions over the previous fortnight and brought with it obvious risks in terms of serious illness and, ultimately, mortality. The strong public health advice was therefore to take additional action now.

9. The additional measures needed to protect against the spread of COVID-19 had to be considered against the backdrop of seven months of damage to the economy and the Scottish Government's limited capacity to mitigate economic harms (in the absence of further UK Government funding), as well as the need to ensure that non-COVID health harms were also tackled. Wider impacts on physical health, mental wellbeing, and social and economic resilience would therefore be taken into account as part of the 'four harms' analysis, in line with the Scottish Government's established decision-making framework.

10. While there remained a considerable well of public support for measures to keep the virus under control, there was a risk that, if the reasons for particular restrictions were not well understood, that support would begin to wane and, with it, willingness to comply with the prevailing (and any additional) restrictions.

11. With the agreement of Cabinet, the First Minister intended to use her public briefing later that day to underline that the new measures under consideration would not amount to a new full 'lockdown' (there was, for example, no intention to impose blanket travel restrictions or to close all non-essential businesses). She would, however, also say that Cabinet was considering what additional steps might be taken, with a focus on limiting the opportunities for viral transmission between people (notably in the context of hospitality). She would also indicate that more stringent measures might need to be needed in the Central Belt (defined for this purpose as the five following NHS Board areas: Ayrshire and Arran; Forth Valley; Greater Glasgow and Clyde; Lanarkshire; and Lothian), where the rate of transmission was currently highest.

12. The sorts of new restriction currently under consideration were designed to limit the amount of time people could spend indoors with other people from different households – for example, in pubs, bars and restaurants – but there was no current intention to prevent people from (for example) staying in self-catering accommodation. In addition, work was in progress to investigate what further financial compensation might be available for the hospitality industry, in view of the economic burden it was continuing to bear.

13. The First Minister also invited the Interim Chief Medical Officer to provide Cabinet with an update on the progress of the COVID-19 pandemic. As at 9 a.m. on 6 October, there had been 33,706 confirmed cases of COVID-19 infection in Scotland, compared with the previous week's cumulative total of 28,604 (*SC(20)37th Conclusions refers*). The total number of confirmed deaths in hospital as a result of COVID-19 stood, regrettably, at 2,532, an increase of 20 since the previous week (and two since the previous day). Some 262 patients were undergoing treatment for COVID-19 in hospital, and 25 were in Intensive Care Units.

14. Dr Smith informed Cabinet that there had been 800 new confirmed cases overnight, of which 303 were in Greater Glasgow and Clyde NHS Board area, 167 in Lanarkshire, 164 in Lothian, with the remainder spread across nine other NHS Board areas. Looking at cumulative seven-day incidence, a number of areas were above the accepted 'red alert' level of 50 cases per 100,000 population, and the average level of test positivity stood at over five per cent (another generally accepted alert level). These statistics indicated the need for urgent action.

15. In addition, the fact that there were a greater number of cases among older people was a sign that there was now widespread community transmission. This age group was also much more likely to require hospital treatment, and as a result, there had been rising numbers of admissions over recent days. While there were now improved treatments available compared with earlier in the year, hospital capacity had reduced somewhat as a result of the introduction of new, COVID-secure pathways to reduce the risk of cross-transmission to non-COVID patients.

16. There was some limited new evidence that the growth in case numbers in Glasgow, where local restrictions were in place, had been blunted to some extent (particularly if allowances were made to adjust for the effect of returning students), although the figures for Lanarkshire were less encouraging, with concerns that there was less containment of the virus, which was moving up through older age groups at a relatively high rate (with a recent doubling of prevalence in the 45- to 64-year-old bracket). Recent evidence from contact tracing across the country suggested that the number of contacts per person had reduced, which was a potentially positive sign.

17. The First Minister informed Cabinet that work was continuing on a full set of new proposals, and that she intended to convene a further meeting of the Cabinet, probably the following morning, to provide an opportunity for Cabinet members to confirm the new package of measures.

18. In discussion the following points were made:

(a) With a rising trajectory of case numbers, it was vital that the education system should be protected by means of the escalation of measures designed to prevent community transmission. There were no current examples of outbreaks originating in schools, but there were cases of school children becoming infected as a result of outbreaks in the wider community. If schools or other educational institutions had to close, this would be a matter of great concern, particularly given the wider implications for childcare;

(b) The option of allowing self-catering and hotel accommodation to remain open would allow some to take holidays during the October break; this seemed sensible, as did the option of still allowing cafés to remain open during the daytime to provide opportunities for limited social interaction;

(c) It was hoped that the risk of behaviours likely to fuel the spread of the virus would, in turn, be limited by the added safeguard of prohibiting on-sales of alcohol (with only minor exceptions);

(d) In light of the clinical data, measures should, as far as possible, be nationwide, and they should be accompanied by further reinforcement of credible and consistent messages emphasising the vital importance of the existing restrictions on visiting other households. This did not, however, mean that additional measures would not be required in particular parts of the country, depending on the local evidence of what measures would be most effective;

(e) It might be helpful to consider whether there would be merit in moving away from the existing 'six from two' restriction (whereby six people from up to two households could meet outdoors and in some hospitality premises) towards a 'one household' limit, although this option would be likely to have significant disadvantages in terms of mental wellbeing;

(f) While limiting the spread of the virus should always be the first priority, it was also the case that the coming school holidays would be the final opportunity for many sections of the tourism and hospitality sectors to recoup some of their losses from a poor summer season. In this regard, the importance of devising an equitable system of compensation to provide at least partial mitigation for the effects of any new restrictions could not be understated, and further representations must be made to the UK Government to secure adequate additional funding for such measures;

(g) More restrictions on the hospitality industry during the final weeks of the season before the winter months would probably result in permanent closures and redundancies. While it was acknowledged that enforcement of restrictions should be stronger in some establishments, there was a general view within the hospitality sector that it had been singled out to make up for the perceived failings of others – particularly given the considerable efforts that many had made to establish COVID-safe environments;

(h) The evidence paper that was in preparation for publication to coincide with the First Minister's planned statement the following day would provide a very helpful support for the additional measures that were considered necessary and should help ensure that the debate about the current situation was based on a common ground of verifiable information (which should, in turn, make new measures more palatable);

(i) Once people saw and understood the evidence, they would also be more likely to accept stricter measures in known 'hotspots', and to accept that a differential approach was likely to be more effective now that it was possible to identify in which areas the prevalence of the virus was highest (and from where it could spread to other parts of the country);

(j) Although consideration might, in theory, be given to whether new restrictions should only come into force after the coming October break, in order to allow people (including families with children) to take planned holidays, this would be problematic for a number of reasons, not least the undoubted risk that increased social interaction would allow the virus to increase its already dangerous doubling rate. Indeed, it might be more prudent to conclude that social contacts over the coming school holiday period would be likely provide an opportunity for the virus to spread even further if new restrictions were not put in place in advance;

(k) Although current deliberations were designed to lead to a set of time-limited measures, it should be plain to all – based on the evidence paper that was in preparation – that many restrictions would need to be in force for a considerable period of time, and public communications would need to emphasise this point, along with the vital importance of not allowing households to mix indoors;

(l) People would be more likely to accept new restrictions if they understood why they were necessary, and if measures continued to be applied equitably. For example, it would be unfortunate if a broad definition of 'hospitality' were to lead to daytime cafés (many of which performed an important social function, especially in smaller and more remote communities) being treated in the same way as late night bars;

(m) Although people were, in general, still willing to comply, a growing proportion wanted – quite reasonably – to understand their rationale, after seven months of restrictions, and the communications effort should be refocused with this in mind;

(n) It would be helpful to be able to give people some indication of how long restrictions might last, and this might reduce the social harm caused by the fear of lasting isolation. Knowing that new restrictions were intended to be time-limited might also tend to improve people's willingness to comply and their confidence in the Government's handling of the situation. However, it must also be acknowledged that the future course of the pandemic was unknown, and there could be no promises that additional measures would be effective within a certain period. Firm undertakings should not, therefore, be made at this stage;

(o) It would be worth ensuring that any new restrictions were considered for their equality impacts in the same way as previous measures (which had been systematically reviewed). Once a final decision was reached on a new package, it would be especially helpful to explain how the four harms had been balanced, and to demonstrate that the evidence had been examined from more than just a public health perspective;

(p) Compliance with physical distancing requirements in the retail sector was becoming a concern, including in some of the large supermarket chains. It would be worth considering whether the two-metre rule should be re-introduced and one-way systems imposed more generally. There was growing evidence of reduced compliance among shoppers, and lack of distance between people provided obvious opportunities for the virus to spread;

(q) Travel restrictions had been shown to be difficult to apply, and any new limits or restrictions would need to be explained very carefully to avoid confusion. Mandatory travel restrictions would also run counter to the proposal that the tourism industry and self-catering businesses should not be shut down completely at this point;

(r) Although private travel could not easily be controlled, and there was no current proposal for widespread travel restrictions, there might be some scope for further advice to limit inessential travel – calling on members of the public to act sensibly and to limit travel from high-risk areas into parts of the country where prevalence of the virus was lower – as well as advice not to use public transport wherever possible;

(s) Compared with travel restrictions, it might be simpler (and easier to explain) to focus current efforts on limiting the opportunities for people from different households to mix together, and this was the main focus of the proposed new restrictions;

(t) It should also be borne in mind that not everyone could afford to travel or planned to take holidays at this point, so undue attention should not be focused on the problems faced by holidaymakers, who represented a small proportion of the population, although the importance of Scotland's hospitality industry could not be ignored;

(u) In summary, the evidence was clear that, to do nothing more at this stage, or to do too little, was very likely to result in further serious illnesses and deaths, and in even more stringent restrictions needing to be imposed at a later date. Therefore, while the term 'circuit-breaker' was unfortunate, it certainly seemed justified to put in place a new set of more stringent measures to reduce the number of riskier interactions between individuals in whatever way possible;

(v) Although, for economic reasons, new restrictions on the hospitality industry must be targeted and time-limited, the package of additional measures, taken as a whole, would need to last as long as was necessary. It would also be necessary to ensure that more was done to encourage compliance, including ensuring that all retail environments returned to a safer mode of operation.

19. Cabinet agreed:

(a) That there was an urgent need for further measures to limit the transmission of COVID-19 in Scotland, based on the evidence of recent alarming growth in the incidence of the virus across the country;

(b) To delegate to the First Minister the responsibility to continue to develop a package of further measures to interrupt and counter the spread of the virus, for announcement the following day;

(c) That the planned package of new measures should be accompanied by a paper setting out, as clearly as possible, the evidence underpinning the need for additional action, and which should include detailed information on:

- ◆ The current state of the epidemic;
- ◆ The extent of geographical spread from the Central Belt towards the rest of Scotland;
- ◆ Demographic spread from younger to older age groups; and
- ◆ The expected consequences if this spread were not to be arrested in the near term;

(d) That, subject to final endorsement by Cabinet at a further meeting over the coming 24 hours, the First Minister should put in hand the implementation of further measures to restrict the spread of the virus, to apply, provisionally, from Saturday, 10 October to Sunday, 25 October, and which should differentiate as required between the Central Belt and the rest of Scotland.

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

Parliamentary Business (Paper SC(20)119)

20. Mr Dey outlined the planned business in the Parliament during the weeks commencing 5, 12 and 26 October and 2 and 9 November, as set out in the tables in Annex A of paper SC(20)119. He noted that there was still some uncertainty surrounding the business in Parliament over the coming fortnight but confirmed that the timing of the First Minister's statement on COVID-19 on 7 October had been moved forward to 3.00 p.m., effectively swapping places with Mr Swinney's planned statement on the Assessment of SQA National Qualifications in 2020-21. Mr Dey also asked Cabinet Secretaries to contact him if they had a topic that could fill the slot for a Government debate on 28 October.

21. It was noted in discussion that a decision had not been reached on what additional Parliamentary scrutiny would be introduced for COVID-19 restrictions before they were introduced (*as outlined further in the SCANCE paper SC(20)120*). Given the need to move quickly to introduce new measures to suppress the virus nationally, there would be limits on the extent of extra scrutiny that could be provided for on this occasion. Mr Dey undertook to discuss scrutiny arrangements for that week with Business Managers at Bureau later that day and report back to the First Minister.

22. **Cabinet agreed** the planned business in the Parliament for the week commencing 26 October, subject to any further changes that might be required.

(Action: Minister for Parliamentary Business and Veterans)

SCANCE (Paper SC(20)120)

23. The First Minister introduced the SCANCE paper (SC(20)120). In discussion of current issues, Cabinet's attention was drawn to the following matters:

2020-21 School Examination Diet

24. Mr Swinney referred to the item in paper SC(20)120 concerning the 2020-21 school examinations diet. In light of stakeholder consensus and the recommendations of the independent review into the handling of the examination results for 2020 led by Professor Mark Priestley, it had been decided that the 2020-21 National 5 examination diet would be cancelled, to be replaced by a robust model of continuous assessment (*SC(20)36th Conclusions refers*).

25. Higher and Advanced Higher examinations would still go ahead in 2021 but would be held slightly later in the year, between 13 May and 4 June, in order to allow additional time for learning and teaching. These steps would help to ensure a successful assessment process for secondary school pupils, despite the challenges presented by the COVID-19 pandemic.

Budget Timetable

26. In relation to the item in paper SC(20)120 concerning the timing of the Scottish Budget, Mr Macpherson noted that there were various fiscal, political and operational risks, with arguments in favour of both confirming a December Budget (in line with the provisional timing already indicated to the Finance Committee) and delaying the Budget until the New Year.

27. The plan for publishing a Scottish Budget in December was intended to see it released at the same time as a range of associated publications, including the final Infrastructure Investment Plan and multi-year Capital Spending Review, the Public Sector Pay Policy for 2021-22, the delayed Medium Term Financial Strategy, and the Climate Change Plan update. Although the Climate Change Plan update needed to be published in December, all of the other publications could be delayed into the New Year along with the Budget if desired.

28. The aim, as usual, was to see a Budget Bill passed by Parliament in February – but amidst continuing uncertainties related to COVID-19, Ms Forbes was considering the contingency scenario of a Bill not passing, and the statutory 'emergency' budget provisions applying from 1 April. A Budget on Thursday, 17 December would conventionally need to be announced on Thursday, 8 October, so as to satisfy the ten-week Scottish Fiscal Commission notification protocol.

29. Ms Forbes and her Ministerial counterparts in Wales and Northern Ireland had each secured Parliamentary statements in their respective chambers later that day to air the issues and to garner cross-country and cross-party support for the Devolved Administrations' representations to the UK Treasury.

30. It was noted in discussion that the decision on Budget timing was finely balanced. The First Minister undertook to provide Ms Forbes with her view on the timing of the Budget to inform a final decision.

(Action: First Minister; Cabinet Secretary for Finance; Budget and Public Spending Directorate)

Irrelevant & Sensitive

Scottish Welfare Fund Management Information

33. In relation to the item in paper SC(20)120 concerning the monthly Scottish Welfare Fund management information, Ms Somerville said that demand for Crisis Grants had increased slightly between July and August, with local authorities receiving 14 per cent more applications in August 2020 than they had in the same month the previous year.

34. Demand for Community Care Grants had decreased during March, April and May 2020, but had since been increasing towards normal levels. While demand had risen in August 2020, applications were still four per cent below the level received in August 2019.

Parliamentary Scrutiny of Coronavirus Regulations

35. In relation to the item in paper SC(20)120 concerning calls for additional Parliamentary scrutiny of Coronavirus regulations before they came into force, Mr Russell said that further discussions would be required with opposition parties before a decision could be taken on the most suitable approach to such scrutiny.

**(Action: Cabinet Secretary for Constitution, Europe and External Affairs;
Constitution and Cabinet Directorate)**

Irrelevant & Sensitive

Physical Distancing Measures in the Scottish Parliament

37. Mr Dey said that new physical distancing measures were now in place inside the Debating Chamber of the Scottish Parliament, which meant that only seven seats could be occupied in the front two rows at the same time. As such, these seats would be reserved for Ministers and opposition spokespersons who were participating actively in proceedings.

38. It was noted in discussion that the Parliament should be encouraged strongly to enforce the use of face coverings when MSPs were moving about the Chamber and the building more generally. Given the rules the public were obliged to follow in wearing facemasks in hospitality, retail and other settings, it did not set a good example for MSPs to be seen moving around the Parliament without face coverings. Mr Dey undertook to speak to the Presiding Officer at Bureau that day to encourage the Parliamentary authorities to enforce stricter practice in this regard.

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(Action: Minister for Parliamentary Business and Veterans)

Any Other Business

39. None.

Cabinet Secretariat
October 2020