

RESTRICTED HANDLING

SC(20)40th Conclusions

SCOTTISH CABINET

MINUTES OF MEETING HELD IN ST ANDREW'S HOUSE, EDINBURGH
AT 9.00 AM ON WEDNESDAY, 21 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 (*)
	Roseanna Cunningham MSP	Cabinet Secretary for 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 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 Wolffe QC	Lord Advocate (*)
	Graeme Dey MSP	Minister for Parliamentary Business and Veterans (*)
	Ken Thomson	Director-General, Constitution and External Affairs
	Professor Jason Leitch CBE	National Clinical Director
	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
	Brian Dornan	Head of Scotland House: London (*)
	Alisdair McIntosh	Strategic Adviser, Outbreak Management (*)
	Liz Lloyd	Special Adviser
	Aileen Easton	First Minister's Official Spokesperson (*)
	NR	FM Covid Briefing Unit (*)
	NR	Cabinet Secretariat (*)

(*) by tele-conference

Parliamentary Business (Paper SC(20)121)

1. Mr Dey outlined changes to the planned business in the Parliament during the week commencing 26 October, as set out in the table in Annex A of paper SC(20)121. He noted that the main change was the addition of a Government debate on COVID-19, to be opened by the First Minister, which Mr Swinney would close.
2. **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)

COVID-19: Strategic Framework (Paper SC(20)122) (*)

(*) In addition, two *ad hoc* papers were distributed to Cabinet members on 20 October:

- o SC(20)40th Meeting - COVID-19 - Background: Slides on State of the Epidemic;
- o SC(20)40th Meeting - COVID-19 - Background: Note on Testing Backlog.

3. Mr Swinney introduced discussion of paper SC(20)122, which invited Cabinet to consider the proposed new COVID-19 Strategic Framework, which was intended for publication later that week, and to offer views on the “levels”-based approach outlined in Annex A of the paper, the associated thresholds, and the approach to decision-making and implementation. The draft text of the Strategic Framework was included in Annex B of the paper.
4. The introduction of the Route Map had provided a structured but flexible path towards exiting from the initial lockdown phase of the COVID-19 crisis. Over time, it had become clear that different approaches would be required to address varying local circumstances, and the initial Route Map had been supplemented by local measures. The proposed new system of levels (or tiers) would form part of a more sustainable and strategic approach, which would effectively sit within Phase 3 of the Route Map, but which would permit the recognition of the differential rates of prevalence across Scotland, while both keeping the virus suppressed and minimising the broader harms brought about by the crisis.
5. Local authority areas would form the geographical building blocks of the new framework, which was intended to be easy to understand and navigate. The different levels that the framework would embody would incorporate tiered sets of restrictions applicable to each main setting (such as socialising, hospitality, travel, shopping, life events, childcare, education, workplaces, and others, as shown in Annex A of the paper), structured in a similar tabular way as the current Route Map. Each level would be carefully calibrated to be proportionate and also to ensure a clear and balanced approach for each setting, so that people in every walk of life should have a better idea of what to expect at each level.
6. This new framework for decision-making might be expected to remain in place for some time following its proposed introduction from Monday, 2 November, which would be subject to Parliament’s consent following the planned debate on COVID-19 on Tuesday, 27 October.

7. Provided the Parliament agreed the general principles of the Strategic Framework, there would then be consultation with local authorities and Directors of Public Health, as well as the National Incident Management Team, before setting the level for each area. The intention was to seek Parliament's consent to the principles of the Framework, rather than on the allocation of individual local authority areas to levels, since the detailed operation of the Framework must remain the responsibility of Ministers, who were legally required to act in accordance with an evidence-based decision-making system, as described further in paragraphs 25 to 27 of the paper.

8. The initial allocation of areas to levels would be likely to require very sensitive handling, with a range of stakeholders and the public. Once initial levels were established, each week would see a review of which levels should be appropriate in each local authority area. The weekly review would ensure that no area remained at a more restrictive level than required for longer than was necessary in terms of the data: it should be more straightforward, in handling terms, than the initial allocation of areas to levels, since it was not expected that every area would require adjustment at each weekly review point (and, as noted in paragraph 25 of the paper, when a higher level was applied, it would be expected to remain in place for at least two to four weeks).

9. The data on which allocations would be based would be drawn from a 'basket' of indicators, including the percentage of positive tests over the preceding week, the number of cases over seven days per 100,000 population, acute hospital and/or Intensive Care Unit (ICU) admissions, and the capacity of NHS services serving each area.

10. The evidence base for each area would be refined over time as new information was analysed. The overall intention, in devising the new Framework, was to ensure that variations in circumstances across different localities could be taken into account more systematically than permitted under the structure of the current Route Map system.

11. The proposed new framework was based on five distinct levels. There was already a baseline level (Level 0) for areas of low prevalence (roughly corresponding to restrictions in Scotland in August 2020), and there would then be three further levels (Levels 1, 2 and 3) which would be roughly equivalent to the three 'tiers' in place in England (although the English system was complicated by the existence of a variety of different local regimes which still sat within Tier 3).

12. The proposals for Scotland would also include a Level 4, which would be closer in some (but by no means all) respects to the lockdown conditions seen earlier in the year. Currently, the restrictions in place in the Central Belt would correspond, approximately, to Level 3, and for the rest of the country, to Level 2. It was likely that Level 4 would be reserved for a situation with very high and increasing incidence of the virus, where the NHS was at risk of being overwhelmed on a national basis.

13. There were still a number of questions to resolve regarding the delineation of the different levels, including issues like how significant travel between areas should be, and how absolute the levels should be, or whether there should be room for flexibility. It was important that there should be a clearly discernible difference between each level, so that the general public could easily distinguish between them.

14. There were also questions to address about the geographical extent of restrictions: for example, the Highland Council area included both the city of Inverness and much smaller settlements such as Kyle of Lochalsh, Mallaig or Thurso.

15. Although there remained significant trade union pressure to move to an assumption of blended learning in schools, even at lower levels of the new framework, the Government's priority goal was to ensure that all schools and regulated childcare would remain open, so long as this remained consistent with the safety of children, young people, staff, and the wider community. The intention would be to consider any necessary restrictions on a school-by-school basis rather than to impose a blanket approach.

16. The First Minister and Ms Freeman had met the leaders of opposition parties the previous afternoon to seek views from across the Parliament about the draft proposals, and Mr Swinney and Ms Campbell had also met representatives of local authorities. Continued dialogue would remain vital over coming days, including early and direct engagement with individual councils about the levels to be allocated within the new framework. Ministers were particularly anxious to ensure effective engagement between the tiers of government, contrary to the position in recent days in England. This was one reason why it would be important to have a robust and comprehensive set of public health evidence to support each allocation decision.

17. There would also need to be a logically coherent progression through the different levels, and consistency between different settings and sectors: continuing work on these points meant that there were likely to be some further changes in the draft Strategic Framework before its publication later that week.

18. The First Minister noted that Cabinet members would receive a subsequent copy of the draft framework for any final comments. Travel advice was likely to form an element of the final package, as this was unavoidable if different areas were allocated to different levels. There was a question about whether travel restrictions should be advisory or set out in regulations, but this difference was easy to overstate, since the success of any framework of restrictions would always rely more on people taking responsibility for their own actions than on formal enforcement.

19. If the default position reflected in the Strategic Framework was for schools to remain open, then – even if there were to be some element of blended learning as part of Level 4 – it should, on balance, be more likely that the Government's primary objective of ensuring the continuity of face-to-face learning would be achieved in practice.

20. There could be no perfect approach to managing the emergency, and there was no point in putting in place an excessively rigid set of decision-making structures. Although this might satisfy a formal concern for continuity with the previous phases of the response, a more dynamic approach was now necessary to respond to the virus in light of the evolving body of knowledge about the risks it presented in different settings: this thinking had resulted in the new Strategic Framework.

21. Funding would continue to be a vital question: if, as seemed possible, the UK Government did not allocate any further consequentials to the Devolved Administrations following its recent promises of additional funding for parts of the north of England, then very strong representations would need to be made to HM Treasury, since such a decision would be neither fair nor acceptable. Scottish Ministers were bound by the financial constraints of the current devolved settlement, which prevented additional borrowing.

22. Under the current devolved funding arrangements, while the level of support the Scottish Government could provide to businesses adversely affected by COVID-19 would be the maximum available under current arrangements, it would only amount to the minimum deemed necessary on public health grounds unless the UK Government allocated additional amounts to the Devolved Administrations.

23. Ms Forbes was due to attend a Finance Ministers' Quadrilateral meeting that afternoon, and she intended to raise the need for fresh support with HM Treasury. Business support requirements were particularly difficult to meet within the current fixed funding arrangements, because the amount of such support was demand-led and impossible to forecast with any degree of certainty.

24. The current, temporary restrictions (largely concerning the Central Belt) were due to expire on 26 October; it was therefore proposed that they should be renewed for a further week, pending introduction of the new framework. Although businesses which had been obliged to close or curtail their services might be unhappy at this decision, it was supported by the clinical evidence, and the current financial support package would be extended.

25. Professor Leitch referred to the slide pack supplied to Cabinet to illustrate the current state of the epidemic in Scotland. While the rate of increase appeared to be declining somewhat, if new case numbers were measured against the projected doubling rate from two weeks previously, the crisis had not yet abated. The National Incident Management Team had met the previous day and had recommended further serious clinical action to tackle the emergency.

26. There were particular worries in some parts of the country: in particular, Lanarkshire and Ayrshire & Arran, where hospital and ICU capacity was under severe pressure from COVID-19 cases. Increasing case numbers over the previous few weeks were soon likely to lead to more general pressure on acute hospital capacity, given the expected two- to three-week time lag between initial diagnosis and hospital admission for the most serious cases.

27. In discussion the following points were made:

(a) An approach based on levels and which permitted a risk-based differentiation between different parts of the country should allow for more closely targeted financial and practical support for businesses. The ability to target support more effectively to particular areas should also offer better value for the public purse (and be more affordable), especially if restrictions were sufficiently localised;

(b) Many members of the public were already expressing anxiety about how they might be able to celebrate Christmas with their families; in most cases, this understandable concern would also be accompanied by a growing (and justified) fear about the course the virus was currently taking, not least following the recent alarming growth in the numbers of confirmed cases, hospital admissions, and deaths;

(c) In reality, because it was not possible to predict the likely situation at the end of the year with any degree of certainty, it was impossible to offer any meaningful reassurance that people might be able to celebrate a 'normal' festive season. However, despite the uncertainty of the times, it would still be important to try to allay people's collective fears to the extent possible: a degree of hope for the future should encourage a greater willingness to comply with current restrictions, which, in turn, should provide the best hope of tempering the effects of the virus in the absence of effective treatments or vaccines;

(d) It was of course to be hoped that there might be greater stability over Christmas, and the actions to be taken now had been judged to be those most likely to increase the degree of normality by the end of the year;

(e) If restrictions were to be put in place covering smaller areas than the 32 local authorities, it might be helpful to consider using postcode areas rather than, say, ward boundaries, as people tended to know their postcode, but not their council ward. It would, however, be important not to place too much emphasis on this point, since localised restrictions were unlikely to be effective in the more densely populated urban areas across much of the Central Belt, even though they might helpfully be used to distinguish between geographically distant localities within large rural authorities in the Highlands;

(f) Data transparency would be of critical importance under the new Strategic Framework, given the importance of detailed criteria in decision-making for allocation of parts of the country to different levels, which would depend on the local incidence of the virus and other factors;

(g) One of the factors to be used in allocating areas to levels would be the projected capacity of local NHS facilities. In many cases, a number of apparently distinct localities, possibly at some distance from each other, might rely on the same ICU beds, which meant that the risk factors relating to ICU capacity would be the same for each, despite possible differences in local incidence of the virus or other factors. This further underlined the need to set out carefully the criteria used to determine allocation for each area;

(h) For some individuals, accurate data would also be an important tool for navigating everyday life, especially for those who had previously been subject to shielding restrictions, and these people might benefit considerably from ready access to a set of information that would be both relevant to their own circumstances and easy to understand;

- (i) A very significant proportion of the available data relating to COVID-19 and its effects was already published on a regular basis (generally by Public Health Scotland (PHS)). It would also be helpful if people could be encouraged to access the data that already existed, as well as to understand better what was – and what was not – currently available. Ms Freeman undertook to ensure that Public Health Scotland took forward this commission in parallel with work to support the introduction of the new Framework;
- (j) The general public would also find it useful to have a readily accessible 'dashboard'-type set of information covering their local area; some was already available from PHS, but some elements might be given additional publicity and made more accessible;
- (k) It would also be helpful if Government statisticians could provide specialist briefing to interested parties on the data sources that were available. The more open the Government and PHS were in making data available, and in explaining the use of data to inform decision-making, the less scope there would be for ill-informed criticism;
- (l) Regular briefing for all Ministers should be made available on the data and scientific evidence that were being used to guide the Scottish Government's response to the crisis. Information such as that included in the paper at Annex C and in the copy presentation that had been provided to Cabinet members on the current state of the epidemic was helpful, but more detailed data would also be useful in a form that could support dialogue with stakeholders;
- (m) It was hoped that the clarity that the new Framework should offer might be welcomed by businesses as an aid to forward planning, especially if the criteria by which areas would be allocated to levels were sufficiently well explained – this underlined the need for continued engagement by Ministers and officials across all sectors;
- (n) In a number of cases, businesses in Scotland saw themselves as leaders of their communities, and had shown themselves willing to shoulder that responsibility. This should be mobilised further as part of Scotland's 'sense of place' and social solidarity;
- (o) Paragraph 56 of the paper referred to furlough contributions not being required after 1 November, but this was in fact inaccurate, since funding would still be required. This underlined the urgent need for HM Treasury to release additional funding to the Scottish Government for business support. It would be of vital importance to make further representations to the UK Government in the strongest terms (in the same way as the leaders of the Greater Manchester Combined Authority in England had done over recent days);
- (p) Although it was well understood that the triggers contained in the Strategic Framework were health-related, the measures and decisions that flowed from them needed to take into account all four harms (the direct impact of COVID-19, other health impacts, societal impacts, and economic impacts);

(q) It was important that the Framework should recognise the considerable progress made since March in sectors such as manufacturing and construction in offering greater workplace safety from the threat of COVID-19, which meant that work could continue with relative safety under most circumstances;

(r) It was helpful that, under the new Framework, there would be a presumption that schools and childcare should remain open under all the levels, and it would be helpful if parents could be offered some reassurance that schools would be appropriately prepared for what might lie ahead, given the central place schools occupied in each community and, also, their importance for the local economy;

(s) Ms Freeman planned to give statements to the Parliament in coming weeks on winter preparedness in the NHS and in the social care sector. It would be important to convey the message that the ability to provide non-COVID-related healthcare would depend on the level of hospitalisations, ICU and High Dependency Unit capacity and the preparedness of COVID-19 hubs;

(t) The increasing incidence of the virus meant that there needed to be a move away from the presumption that regular NHS services were remobilising, since this was not the case in all parts of the country: people's expectations of NHS services in their areas should therefore be more explicitly linked to how well the fight against the virus was progressing;

(u) Given that there would be different restrictions in force in different localities according to which level they were allocated to, there would be an increasing need to focus on how best to mitigate the risks associated with travel between different areas. For instance, Helensburgh (where the virus was currently at relatively low levels) had received many visitors the previous weekend from West Dunbartonshire (where incidence was high);

(v) More generally, it would be important to make clear to the general public – particularly those who lived in remote areas such as the islands – what they should, or should not, travel for. This would be especially important for those islands where there was currently a lower rate of incidence of the virus than in many mainland areas;

(w) There should be continuing dialogue with transport operators about the implications of the new Framework. For example, carriers such as Loganair, which carried passengers from highly populated areas such as Glasgow to various locations in the Highlands and Islands;

(x) Enforcement of travel restrictions should also be discussed further with Police Scotland: although it was arguable whether limits or restrictions should be advisory or set out in regulations (in view of the difficulties of enforcement), the general public might be more inclined to comply with legal requirements than guidance (as had been the case for face coverings). On the other hand, over the previous ten days, new travel guidance for the Central Belt, appeared to have had a significant effect in reducing the number of journeys made, even though the advice was not legally enforceable;

(y) It would also be useful to give further consideration to whether Fixed Penalty Notices were set at the appropriate level or whether the level of fines under the applicable Coronavirus regulations should be increased (*as mentioned in the draft Strategic Framework to be found on page 48 of the paper*). It was important to ensure that there remained an appropriate balance between compliance and enforcement;

(z) An Equality Impact Assessment should be prepared for the new Strategic Framework, in the same way as for previous strategic responses to the pandemic;

(aa) It would be helpful to gain an understanding of the funding that would be available for community groups and volunteers to access in this phase of the pandemic response, since they played an especially important role in supporting isolated people and those in poverty or need;

(bb) In rural Scotland, where micro-businesses were in the majority, and where many did not operate from premises with rateable values, there was a need to ensure that they did not miss out from business support;

(cc) Businesses in sectors most affected by restrictions, such as hospitality, would welcome advance notice of any change in the restrictions that applied to them. For many, the economic situation was very difficult, and even a small change in the rules, such as the ability for hotels to serve an alcoholic drink to hotel guests who were dining, would make a meaningful difference. Meantime, close engagement should continue with stakeholders such as the Licensed Trade Association to understand what further assistance might be possible;

(dd) More generally, most businesses would find advance notice of any change in restrictions very helpful, in order to allow them to plan ahead. It would also be encouraging, and might help the public mood, to make clear that the most severe restrictions – in Level 4 – would only be used as a last resort in tackling the virus;

(ee) Discussions continued between the Minister for Parliamentary Business and Veterans and the Presiding Officer about the degree of Parliamentary scrutiny that would be required under the new Strategic Framework, including any role for Committees. It would be vital to ensure that Ministers (in consultation with local government) retained responsibility for the allocation of levels to geographical areas.

28. Summing up, the First Minister emphasised the stark choices that faced the Government given the current state of the epidemic across Scotland. It could not be ruled out that, in the near future, a large proportion of the country's population might find themselves living under the highest level of restrictions provided for under the proposed new Strategic Framework. Should that be required, it would be imperative to pursue HM Treasury for adequate additional funding, over and above the sums already allocated, so as to allow for adequate compensation for the economic harm additional restrictions would undoubtedly entail. Discussions on this point must continue with HM Treasury pending a satisfactory resolution.

29. The pre-consultative process with local authorities, business representatives, trade unions, the third sector, the Parliament, and others about the implications of the proposed new Strategic Framework must continue over coming days in advance of the debate and vote in the Parliament planned for Tuesday, 27 October and, thereafter, before the initial allocation of areas to levels, which were due to come into force from Monday, 2 November.

30. Without pre-empting the allocation process, advance dialogue with civic Scotland and other stakeholders would continue to be vital, given that the announcements over coming days would no doubt entail some difficult news for many people, businesses, and other organisations across much of the country.

31. **Cabinet:**

(a) Agreed with the terms of the proposed new strategic approach contained in Annex B of the paper, including the proposed levels (Annex A of the paper), the publication of thresholds, and the decision-making process;

(b) Delegated to the First Minister the final decisions on the specific detail of the new strategic approach to allow finalisation of the new Strategic Framework in the course of Wednesday, 21 October and its publication on Friday, 23 October; and

(c) Agreed that all necessary actions should be put in hand to ensure that, subject to the necessary consent in the Scottish Parliament, the necessary changes to regulations, guidance and advice would be in place so that the measures flowing from the new Strategic Framework could be announced, publicised, implemented, and enforced as soon as required.

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

Any Other Business

32. None.

Cabinet Secretariat
October 2020