

RESTRICTED HANDLING

SCN(21)26th Conclusions

## SCOTTISH CABINET

MINUTES OF MEETING HELD IN ST ANDREW'S HOUSE, EDINBURGH  
AT 9.30 AM ON TUESDAY, 7 DECEMBER 2021

<b>Present:</b>	Rt Hon Nicola Sturgeon MSP John Swinney MSP	First Minister Deputy First Minister and Cabinet Secretary for Covid Recovery
	Keith Brown MSP Kate Forbes MSP Mairi Gougeon MSP Michael Matheson MSP Rt Hon Angus Robertson MSP	Cabinet Secretary for Justice and Veterans Cabinet Secretary for Finance and the Economy Cabinet Secretary for Rural Affairs and Islands Cabinet Secretary for Net Zero, Energy and Transport Cabinet Secretary for the Constitution, External Affairs and Culture
	Shona Robison MSP	Cabinet Secretary for Social Justice, Housing and Local Government
	Shirley-Anne Somerville MSP Humza Yousaf MSP	Cabinet Secretary for Education and Skills (*) Cabinet Secretary for Health and Social Care
<b>In Attendance:</b>	Leslie Evans NR George Adam MSP Dr Gregor Smith John-Paul Marks	Permanent Secretary Lord Advocate Minister for Parliamentary Business Chief Medical Officer (*) DG Work and Health Services, Department for Work and Pensions (*)
	Ken Thomson Penelope Cooper James Hynd David Rogers Shirley Rogers Dr Colin Troup Alan Johnston Amanda Gordon Marion McCormack Lisa McGuinness Michelle Rennie Liz Sadler Jennie Gollan David Livey Colin McAllister Callum McCaig Stuart Nicolson Chris Mackie Julie Grant	DG Constitution and External Affairs (*) Director of Culture, Major Events and Covid Co-ordination (*) Director for Cabinet Director, Constitution and Cabinet (*) Director, Organisational Readiness (*) Legal Secretary to the Lord Advocate (*) Deputy Director, Covid Co-ordination (*) Deputy Director, Outbreak Management (*) Deputy Director, Covid Ready Society (*) Permanent Secretary's Principal Private Secretary (*) First Minister's Principal Private Secretary Deputy Director, Covid Ready Society (*) Special Adviser (*) Special Adviser (*) Special Adviser (*) Special Adviser (*) Special Adviser (*) First Minister's Official Spokesperson (*) Assistant Head of News (*) FM Covid Briefing Unit (*)
	NR Sinéad Power Stephen Jones	First Minister's Policy and Delivery Unit (*) Unit Head, Covid Status Certification (*) Head of Briefing and Evidence, Covid Co-ordination (*) Team Leader, Criminal Justice Reform (*)
	NR	

**OFFICIAL-SENSITIVE**

<b>NR</b>
<b>NR</b>

DPS/First Minister (\*)  
Cabinet Secretariat (\*)  
Cabinet Secretariat (\*)  
Cabinet Secretariat (\*)  
Cabinet Secretariat

(\*) *by tele-conference*

**Introductory Remarks**

1. The First Minister welcomed John-Paul Marks to the meeting. Mr Marks was due to take up the post of Permanent Secretary to the Scottish Government on 5 January 2022.

**Minutes of Meeting held on 30 November 2021**

2. The minutes of the meeting held on 30 November (SCN(21)25th Conclusions) were approved.

**Parliamentary Business (Paper SCN(21)84)**

3. Mr Adam outlined the planned business in the Parliament during the weeks commencing 6, 13 and 20 December and 10 January, as set out in the tables in Annex A of paper SCN(21)84. He noted that the planned statement on arrangements for a COVID-19 public inquiry, currently scheduled for the afternoon of 14 December (but not yet notified to the Bureau), might instead take place the following week but that this was still to be confirmed.

4. **Cabinet agreed** the planned business in the Parliament for the week commencing 20 December, subject to any further changes that might be required.

**(Action: Minister for Parliamentary Business)**

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

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

6. As at 9 a.m. on Tuesday, 7 December, there had been 746,549 confirmed cases of COVID-19 infection in Scotland (compared with 727,549 on the same day the previous week). There had been a net increase of 3,060 cases compared with the previous day, which corresponded to 9.2 per cent of those tested (compared with a positivity rate of 11.5 per cent on the same day the previous week).

7. Since the previous day, 12 further deaths (all among over 60s) had been registered within 28 days of a positive test for COVID-19, and the total number of deaths using this measure since the start of the pandemic now stood at 9,661 (compared with the previous week's figure of 9,572).

8. Seven-day rolling average case numbers had risen since the recent trough of 2,554 on 3 December; they now stood at 2,734 and were expected to rise further. Seven-day cumulative incidence was now 350 per 100,000 population, compared with 327 on 28 November, with an average positivity of 9.1 per cent (which had remained relatively stable).

9. The trend of declining hospital admissions had continued, which was reassuring in the current context, but this was based on new cases which had arisen two to three weeks previously. This downward trend, which was particularly marked among older age groups, was likely to reflect the effect of the booster vaccination programme on limiting severe illness. However, the time lag between infection and hospitalisation meant that the expected effects of the new Omicron variant were not yet apparent in these figures.

10. According to the previous day's data on the Omicron variant, 71 cases had been confirmed formally in Scotland, of which 23 were new cases that day. Analysis of S-gene target failure (which provided a good proxy for the new variant) gave a 'possible' figure of 309, with a substantial rise of 113 over the previous day. The impacts of current delays in data from the Lighthouse laboratory might also be having some impact on the figures. Overall, S-gene dropout now represented some three per cent of isolates in Scotland, with a doubling time of 2.0 to 2.5 days.

11. These figures combined to give an idea of the speed at which the new variant was progressing in Scotland; growth in case numbers was, by its nature, logarithmic in scale, and it would therefore take very little time to rise to substantial totals. The current Reproduction number (R) for Omicron had been calculated at 2.7 for the UK as a whole (with a range of between 2.0 and 3.3). This sort of growth had last been seen in March and April 2020 on the arrival in the UK of the original Wuhan strain, and Omicron appeared to be spreading more rapidly than either the Alpha or Delta variants.

12. Case numbers continued to rise very fast in southern Africa, where Omicron had first been identified, and there appeared to be a far greater number of cases of re-infection than with previous variants. The reason for the speed of increase was likely to be a combination of both increased transmissibility and vaccine evasion, although this was not yet certain. There was also evidence that the variant might be capable of infecting large numbers attending gatherings of people in indoor places – the so-called 'super-spreader' effect. It was also becoming apparent that Omicron had both a high attack rate (especially within households and at public gatherings, such as early Christmas parties) and potentially also a shorter incubation period than earlier variants.

13. In discussion the following points were made:

(a) It would be helpful to know whether recent delays in processing at the Lighthouse Laboratory represented isolated occurrences or whether they might suggest a more systemic problem, perhaps resulting from volume pressures;

(b) The UK Department of Health and Social Care had already been made aware of the importance of coming to a rapid decision on the extension of contracts for staff at the Lighthouse Laboratory, which were currently due to expire at the end of March: it would be vital to avoid recruitment problems over coming months. This issue must be pressed hard with UK Ministers: this should in any case be a joint decision, since the facility was co-funded by the UK and Scottish Governments. Mr Yousaf undertook to pursue this matter further with his counterparts at UK level;

(c) Assuming that the Omicron variant did not result in an unexpectedly rapid rise in hospital admissions over the next two to three weeks, current case data (with falling case volumes in older age groups) suggested that there was likely to be relatively stable demand for NHS services in the lead-up to the festive period;

(d) By far the majority of cases (perhaps over 90 per cent) which exhibited the so-called S Gene Dropout were likely to be instances of the Omicron variant. This had already been shown to be the case in southern Africa, but further work was under way to establish the position in Scotland;

(e) Public Health Scotland's view was that, over the next few days, it seemed likely that data would confirm that sustained community transmission had already been established. Omicron cases had already been reported in almost every NHS Board area, with S Gene Dropout seen in over three per cent of new COVID-19 infections. Partly as a consequence of its very high transmissibility, Omicron might be expected to replace Delta as the dominant variant in Scotland as soon as very early in the New Year;

(f) It was not yet clear whether the Omicron variant caused any change in the severity of illness: no hospitalised cases had yet been confirmed in Scotland, and early international data on the proportion of cases resulting in hospitalisation was not yet considered reliable, since thresholds for hospital admission varied in different health systems. In South Africa, a disproportionate number of cases had been detected among younger age groups (many of whom had been screened for COVID-19 when admitted to hospital for other conditions);

(g) Even if the illness resulting from the Omicron variant turned out (as some had suggested) to be less severe (particularly in populations, such as Scotland, where a high proportion of adults had been fully vaccinated), a proportion of cases would inevitably still require to be admitted to hospital, particularly if Omicron evaded immunity better than earlier variants. A smaller proportion of a larger number of cases might yet exceed the numbers requiring hospitalisation under current conditions;

(h) The unprecedentedly rapid growth of the new variant – whether it was caused by increased transmissibility or by immune escape – would be the most significant risk factor in the management of COVID- and non-COVID-related pressures on NHS services over coming months.

**COVID-19: Review and Response (Paper SCN(21)85)**

14. The Deputy First Minister introduced paper SCN(21)85 which invited Cabinet to agree to maintain – and where possible, reinforce – the existing baseline arrangements, determine whether there might be a case for extension of the vaccine certification system, and consider what further changes might be required in the near future to take account of the new Omicron variant and its effects on the course of the pandemic in Scotland.

15. The paper needed to be seen in the context of the update provided by CMO and, in particular, fresh information about the nature of the Omicron variant. Judgements made that day might well be different in a week's time: a fortnight previously, Cabinet had discussed protective measures just two days before the news had emerged from South Africa about Omicron.

16. It was proposed to maintain current baseline measures, notably encouraging staff to work from home wherever possible, the expansion of the testing and vaccination programmes, and a number of changes in the 'Four Nations' international travel rules which had come into force since Cabinet had last considered them.

17. The paper also suggested the possibility of extending the certification scheme if Cabinet were to deem this an appropriate response at this time. The options were similar to those considered two weeks previously (*SCN(21)24th Conclusions refers*), though these must now be viewed in the new context of Omicron (in particular, the apparent ease with which it was transmitted through 'super-spreader' events).

18. Possible options might be summarised as follows: Option 1 would require a record of a negative test result in addition to proof of vaccination; Option 2 would extend the scope of the scheme to include indoor theatres, cinemas, concert halls (however many people attended) and all indoor public premises where alcohol was consumed (either in addition to or instead of Option 1); finally, Option 3 would add to Option 2 all indoor public premises which people attended for leisure, hospitality or recreation. It was possible that these could be introduced as early as 13 December, if desired, with enforcement from 20 December. Further details were contained in the paper at paragraphs 28 to 70.

19. On the basis of current evidence, changes in the certification scheme might not yet be seen to be proportionate at the present time – although the balance of judgement on this point might change in the very near future, pending further information about Omicron and the rapidly changing situation on the ground.

20. Extensive dialogue had taken place with the Scottish Green Party in advance of the discussion at Cabinet on 23 November (and the decision to include a record of a negative test result as an alternative to proof of vaccination), but further detailed engagement would be required before a final decision was reached on any changes.

21. The First Minister noted that, while existing protections would need to be maintained in formal terms, public communications must emphasise the need to strengthen adherence (especially in respect of working from home), rather than

continuity with the current rules: the situation was anything but 'steady state', and the language used must reflect this, so that people would begin to grasp the magnitude of the situation.

22. The First Minister's statement to the Parliament that afternoon would provide a good opportunity to articulate a change in emphasis on the need to work from home wherever possible, even if baseline requirements remained unchanged. If staff had worked from home at the outset of the pandemic, employers should, wherever possible, ensure that they allowed them to do so once more – at least until the next few difficult weeks had passed and the situation became clearer. The public call to work from home would once more need to be backed up by rapid and intense dialogue with business organisations and other stakeholders.

23. Additional points for emphasis in all public messaging would include encouraging people to get tested before going out: this message had already begun to gain some acceptance, but it needed to be driven home. In addition, the public needed to be warned about the increased risks associated with 'super-spreading' events (largely as a result of airborne transmission), which must be understood to encompass almost any gatherings in crowded and/or confined spaces.

24. There had already been a number of instances of 'super-spreading' events leading to very rapid transmission of the Omicron variant, and consideration would need to be given to any further restrictions, especially in the run-up to the festive period.

25. Before taking decisions on which additional protections (including potential changes to the certification scheme) might have the greatest impact in tackling the new variant, there would be merit in taking account of the further indicative information on Omicron which CMO and Public Health Scotland were due to receive later that week. More information would also become available on the extent of community transmission, which would also determine the appropriate response. It would, however, be counter-productive to await full analysis of emerging data about the characteristics of Omicron, which might take some time.

26. Some difficult decisions were likely to be required in the immediate term, which would need to balance the need to remain proportionate against the urgent requirement for preventative action. In all this, it would be important not to introduce any new measures in a piecemeal fashion. All new measures remained in scope, but now was not yet the time to decide on any changes (including to certification).

27. This said, decisions might be required before the next planned meeting of the Cabinet (on 14 December), depending on when sufficient new information on Omicron became available, and Ministers and officials should stand ready to act whenever required. Any decisions would also require further engagement with the Scottish Green Party and across the Parliament, as well as with sectoral representatives, local government, at 'Four Nations' level, and with other stakeholders.

28. In discussion the following points were made:

(a) Urgent consideration should be given to whether more might need to be done to protect the most vulnerable in society. It was not proposed to consider the re-introduction of shielding, as the harms it caused (for example to mental health) outweighed potential benefits, but the residents of care homes, hospitals, prisons and other such settings needed enhanced protection. This might be achieved, for example, by requiring visitors to provide evidence of a negative test in advance of any visit and/or by encouraging further uptake of booster vaccinations among vulnerable groups. These issues would need to be considered further over coming days alongside other potential measures;

(b) There was anecdotal evidence of 'super-spreader' events in places like pubs and bars, and the arrival of Omicron was likely to make this even more common: it might therefore be worth looking specifically of the risks of gatherings in pubs and other similar venues, especially in view of the festive season. One way in which this might be achieved would be by expanding the certification scheme by requiring both proof of vaccination and a record of a recent negative test (Option 1), but there was no current majority in the Parliament for such a measure (although this might change as new data emerged);

(c) In addition, it might be that a decision to expand COVID certification in some settings might not be required, if there were to be a broader decision to prevent events involving more than a certain number of people (and which might be seen as likely to be 'super-spreader' events) from taking place at all. The whole package of measures would therefore need to be considered in the round over coming days;

(d) Parliamentary and sectoral re-engagement would be required in advance of any material expansion of the scope of the certification scheme in order to secure maximum commitment to compliance;

(e) Taking the necessary time to arrive at the most balanced and proportionate set of measures should not be seen as creating unnecessary delay: rather, it would be vital to be sure that any new package was designed to secure the maximum degree of confidence and compliance, based on the most up-to-date information about Omicron;

(f) In advance of the festive period, it would be helpful to engage further with different groups to ensure that the necessary support was available to those where there was evidence of lower levels of compliance with restrictions or of lower take-up of vaccinations. This should involve community and faith groups as well as sectoral organisations. It would also be very important to challenge business organisations about how they were cascading any information among their members;

(g) People might be more inclined to comply with additional restrictions if they knew that they were intended to be in force for only a limited period. Even if the period of restrictions were to be extended subsequently, there might be a psychological benefit in setting an initial term, at least as an intention;

(h) Any new set of measures would need to be carefully calibrated in order to avoid unintended consequences and low compliance. There had, for example, been an example of a large school cancelling all Christmas parties on school premises, but of parents and pupils for a number of year groups subsequently booking village halls for private parties. Causing gatherings to move into unregulated space in this way might potentially be a backward step;

(i) This anecdote was a good illustration of the fact that any new measures must be designed to fit in with the actual pattern of people's lives, particularly after such a long period of onerous restrictions on people's behaviour: public willingness to comply fully with measures that were not accepted as reasonable should not be taken for granted;

(j) It would be helpful to know how severe the illness resulting from the Omicron was likely to be, compared with earlier variants. However, even if illness were to be marginally less severe, its likely increased transmissibility and ability to evade immunity was likely to result in higher overall levels of hospitalisation and worse impact on the health service;

(k) Acting too late in the face of a known risk which subsequently materialised would have adverse consequences; conversely, if early action meant that a risk had been averted, public confidence (and willingness to comply with future restrictions) might fall if people were not convinced that the action had been necessary: balancing prevention with proportionality was therefore a key task for Ministers, as well as ensuring that the public received timely and complete information about the justification for any actions;

(l) The potential impact of any new measures on children and young people in education meant that a cautious and considered approach to decision-making would be helpful, taking into account the competing harms and the importance of young people's qualifications;

(m) It would be vital to remain agile over the next few days and to use any emerging information about the Omicron variant as actionable intelligence to inform any course of action;

(n) As the severity of the Omicron variant became clear, it would be vital for all organisations, in all sectors, to review their business continuity arrangements. The weight of likely numbers becoming ill or forced to isolate as a contact meant that risks to national resilience were likely to come to the fore over coming weeks.

29. **Cabinet:**

(a) Noted the updates set out in this paper and its Annexes;

(b) Agreed that the current statutory measures should be confirmed for a further period of up to three weeks;

(c) Agreed to consider options for the extension of certification, as a preventative measure;

(d) Agreed that, although it did not yet appear to be proportionate to introduce further protective measures at this stage, emerging evidence on the Omicron variant might well mean that such a move would be considered proportionate on a preventative basis in the near future;

(e) Agreed that work should therefore continue urgently to develop the potential measures outlined in the paper, for further consideration at the following week's meeting of the Cabinet (or sooner); and

(f) Agreed to delegate to the First Minister decision-making in the period between that day and the following week's meeting of the Cabinet, with support from Ministerial colleagues, officials and advisers.

**(Action: First Minister; Deputy First Minister and Cabinet Secretary for Covid Recovery; DG Constitution and External Affairs)**

**Irrelevant & Sensitive**

**Irrelevant & Sensitive**

# Irrelevant & Sensitive

## **SCANCE (Paper SCN(21)88)**

45. The First Minister introduced the SCANCE paper (SCN(21)88). In discussion of current issues, Cabinet's attention was drawn to the following matters:

### ***Scottish COVID-19 Public Inquiry***

46. In relation to the item in paper SCN(21)88 concerning the Scottish COVID-19 Public Inquiry, Mr Swinney noted that it was hoped that Ministers would be in a position to announce the Chair of the Inquiry the following week, subject to the sitting Scottish senator identified for the role accepting it. Should the individual choose not

to accept the position, then the establishment of the Inquiry was likely to be delayed into the New Year.

**I&S**

**Irrelevant & Sensitive**

# Irrelevant & Sensitive

## *Early Learning and Childcare and School Inspections*

56. Ms Somerville drew Cabinet's attention to the item in paper SCN(21)88 which outlined the decision of HM Inspectors of Education to not resume routine inspections of early learning and childcare settings and schools as planned in January 2022, due to COVID-19.

57. In discussion it was noted that this appeared to be a sensible decision given the challenges that would be posed by the rapid spread of cases of the Omicron variant.

58. More generally, Ministers should continue to scrutinise the decisions of public agencies when they were seeking to postpone a return to or discontinue normal activities, in order to ensure that there was a sound basis for such decisions.

**Irrelevant & Sensitive**

**Any Other Business**

64. None.

Cabinet Secretariat  
December 2021