

## SCOTTISH CABINET

MINUTES OF MEETING HELD IN ST ANDREW'S HOUSE, EDINBURGH  
AT 9.30 AM ON TUESDAY, 17 NOVEMBER 2020

<b>Present:</b>	Rt Hon Nicola Sturgeon MSP	First Minister ( <i>part of meeting only</i> )
	John Swinney MSP	Deputy First Minister and Cabinet Secretary for Education and Skills (*)
	Aileen Campbell MSP	Cabinet Secretary for Communities and Local Government (*)
	Roseanna Cunningham MSP	Cabinet Secretary for the Environment, Climate Change and Land Reform (*)
	Fergus Ewing MSP	Cabinet Secretary for Rural Economy and Tourism (*)
	Kate Forbes MSP	Cabinet Secretary for Finance (*)
	Jeane Freeman MSP	Cabinet Secretary for Health and Sport
	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 (*)
<b>In Attendance:</b>	Leslie Evans	Permanent Secretary (*)
	Alison Di Rollo QC	Solicitor General (*)
	Graeme Dey MSP	Minister for Parliamentary Business and Veterans (*)
	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 (*)
	James Hynd	Head of Cabinet Secretariat
	John Somers	First Minister's Principal Private Secretary (*)
	Alisdair McIntosh	Strategic Adviser, Outbreak Management (*)
	Liz Lloyd	Special Adviser (*)
	Colin McAllister	Special Adviser (*)
	Stuart Nicolson	Special Adviser (*)
	Aileen Easton	First Minister's Official Spokesperson (*)
	Chris Mackie	FM Covid Briefing Unit (*)
	NR	PS/First Minister (*)
	NR	First Minister's Policy and Delivery Unit (*)
		Cabinet Secretariat (*)
		Cabinet Secretariat (*)
		Cabinet Secretariat (*)
		(*) by tele-conference

## Apologies

1. Apologies were received from Ms Hyslop; she was represented by Mr Russell.

## Minutes of Meeting held on 10 November 2020

2. The minutes of the meeting held on 10 November (SC(20)43rd Conclusions) were approved.

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

3. The First Minister invited the Interim 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. As at 9 a.m. on 17 November, there had been 83,259 confirmed cases of COVID-19 infection in Scotland, compared with the previous week's cumulative total of 75,187 (SC(20)44th Conclusions refers). The total number of people whose deaths had been registered within 28 days of testing positive for COVID-19 now stood at 3,323, an increase of 244 since the previous week. The previous day, there had been 1,227 patients in hospital and 98 in Intensive Care Units.

4. Dr Smith informed Cabinet that there had been an increase of 1,248 confirmed cases of COVID-19 infection in Scotland since the previous day. Of these, 439 were in the Greater Glasgow and Clyde NHS Board area, 282 were in Lanarkshire, 153 in Lothian, 86 in Tayside, 80 in Forth Valley, and 79 in Ayrshire and Arran. The remaining cases were spread among the other five mainland NHS Boards; there had been no new cases in the three Island Board areas.

5. There were reports of growing pressures in Intensive Care and in respiratory wards set aside for COVID-19 patients, especially in the Greater Glasgow and Clyde and Ayrshire and Arran NHS Board areas.

6. The national figures, which were broadly stable, masked a varying regional picture, which gave significant cause for concern in some areas, especially in advance of the winter months.

## COVID-19: Review of Protection Levels (Paper SC(20)135)

### Briefing paper distributed to Ministers attending Cabinet:

- o SC(20)44th Meeting - COVID-19 Strategic Framework: Levels Allocation Review - Summary Indicators and Trends - prepared 16 November 2020

7. Mr Swinney introduced paper SC(20)135 which invited Cabinet to consider the revised COVID-19 protection levels which the First Minister was due to announce in the Parliament that afternoon and which were intended to apply from Friday, 20 November. The paper also recommended that travel restrictions be included in regulations, as discussed at the previous week's meeting of the Cabinet (SC(20)43rd Conclusions refers), and described the proposals for additional financial support that would be put in place to mitigate, as far as possible, the wider impacts of applying higher levels of protection to suppress the virus.

8. This was the second weekly review undertaken since the publication of *COVID-19: Scotland's Strategic Framework* on 23 October (*SC(20)40th Conclusions refers*), in line with the clear decision-making processes and governance arrangements set out in section 4 of the Framework: *Suppressing the virus*. The outcome of the weekly review had again been informed by expert advice from the National Incident Management Team (NIMT) and from the chief advisers and senior officials in the Four Harms Group, as well as by extensive bilateral discussions with individual local authorities led by Mr Swinney and Ms Campbell.

9. In forming its conclusions, the NIMT had met the previous day to discuss a 'watch list' report (*Summary Indicators and Trends*) prepared by the COVID Modelling and Analysis Hub under the authority of the Chief Statistician, to provide information about level signals to inform the weekly review. The report showed the position of each local authority area in relation to five agreed indicators: weekly figures for cases per 100,000 and test positivity rates (both updated on 12 November), and the latest daily forecasts (made on 16 November) for cases per 100,000, hospital capacity and ICU capacity. Trends in the data had also been identified and taken into account, alongside more detailed data and analysis for each area supplied by the relevant Directors of Public Health. The final version of the report had been supplied to Ministers attending Cabinet to inform their decision-making and would be published that afternoon to accompany the First Minister's statement to the Parliament.

10. Bilateral discussions with local authorities had assumed the following starting point: first, the fact that Christmas would, inevitably, bring with it increased interactions between individuals, and secondly, that COVID-19 would plainly magnify the usual NHS winter pressures that would arise in early 2021. In that context, the question to consider was: was the 'baseline' level of COVID-19 infection going into that period low enough? The NIMT had reached the clear conclusion that, without further action, this would not be the case. The reactions of individual councils had ranged from reluctant acceptance to some limited objections.

11. The NIMT had concluded that, in some parts of (in particular) west central Scotland currently at Level 3, the levels of infection still remained 'plateaued' at stubbornly high levels, despite evidence of recent progress and positive trends in some parts of the region. If this were to be prolonged, it would place in jeopardy the Strategic Framework's overall objective of suppressing the virus. As indicated at the previous two weeks' meetings of the Cabinet (*SC(20)42nd and 43rd Conclusions refer*), it seemed that the only way to drive a sustainable reduction in case incidence in the areas concerned was likely to involve a move to Level 4 for at least a limited period. Without additional, targeted measures such as this, there might be a damaging loss of control over the rate of infection more widely.

12. The paper placed due emphasis (in paragraphs 65 and 66) on the importance of the availability of adequate financial support in order to compensate, at least partially, for the economic harm done by a move to Level 4, and it also explained the justification for a change of approach with regard to travel restrictions, which would be placed into Regulations (see paragraphs 55 and 56) as a necessary accompaniment to the heightened differences in protection levels across the country.

13. There remained a practical decision to be made about the time of day at which any new Level 4 restrictions should be implemented, assuming they were approved for Friday, 20 November. If they came into force at 6.00 p.m., this would permit the school day to finish as usual: although schools would remain open throughout Scotland, including in Level 4 areas, there were some implications for staff, including those who might be in shielding groups, and these had been raised by teaching unions.

14. Dr Smith noted that, in clinical terms, it might reasonably be expected that Level 4 restrictions would reduce exposure to the virus in a number of settings identified as key to transmission of the virus by recent Test and Protect work, such as workplaces, car sharing, retail environments, personal services, and eating out. However, the highest proportion of exposures to the virus still arose between members of households: once one family member caught COVID-19, it was almost inevitable that others would follow. In addition, importation from international travel and travel from the rest of the UK remained an important source of infection.

15. Commenting on the proposals, the First Minister indicated that the levels system was proving helpful in mounting a tailored and proportionate response to the current situation: higher prevalence in one area did not require uniform measures across the whole country. Some progress had been seen, it was important that the system should be seen to allow areas to move down a level as well as up. However, this needed to be set against the starker reality that the situation in west central Scotland – particularly as regards projected ICU capacity and the demands this would place on NHS staff – was a cause of significant concern which would require immediate action.

16. Should the situation continue unchecked, there could be no room for any letting up in restrictions over the festive season, and, in line with public health advice, a tightening of restrictions now appeared to be the only possible route towards the prospect of any limited and temporary easing over Christmas. This implied moving the worst hit areas into Level 4 for a time-limited period (probably lasting three weeks) – although all levels would remain subject to weekly review.

17. There was a strong consensus case for moving five of the six local authorities in the NHS Greater Glasgow and Clyde area (Glasgow City, East and West Dunbartonshire, East Renfrewshire, and Renfrewshire) to Level 4, along with both North and South Lanarkshire. (Inverclyde presented a different set of indicators, and the NIMT had recommended that it remain in Level 3.)

18. For the local authorities falling under the responsibility of NHS Ayrshire, while the NIMT had recommended that all three move to Level 4, the arguments did not appear clear cut, and taking into account the generally improving trend in North Ayrshire, the First Minister proposed, subject to Cabinet's views, that only East and South Ayrshire move to Level 4, but that North Ayrshire should remain at Level 3 (along with its neighbouring authority, Inverclyde), despite the inter-dependencies between the Ayrshire authorities.

19. The finely balanced decision in relation to North Ayrshire served only to emphasise the importance of moving to strengthen travel restrictions, the main object of which was to prevent the importation of the virus into areas of currently lower prevalence. Travel restrictions had also been a material consideration in relation to some of the NIMT's advice.

20. Although the NIMT had recommended that all three authorities in the NHS Forth Valley area be considered for inclusion in Level 4, the situation in Stirling was the most concerning, and the case did not appear persuasive for either Falkirk or Clackmannanshire to move to Level 3 at this point.

21. As noted in paragraph 33 of the paper, although the NIMT had advised maintaining West Lothian at Level 3, current data and trends in local indicators were similar to those for Stirling and East Ayrshire (both of which were proposed for Level 4), and the case to move West Lothian to Level 4 appeared just as strong as in the other areas of the Central Belt which were due to move up to that level. The First Minister therefore proposed that West Lothian also move to Level 4.

22. Although there were a number of areas where incidence of the virus remained too high (and where, subject to Cabinet's views, the protection level would need to rise to Level 4 from Friday, 20 November, as outlined above), there were two areas (East Lothian and Midlothian) where the indicators, together with judgements reached by the NIMT and the Four Harms Group, combined to justify a move to Level 2. Given that this would be a relaxation of existing restrictions, a precautionary approach would suggest that this change should not be implemented before Tuesday, 24 November, so as to leave one further weekend at Level 3.

23. Although the NIMT had raised the question of whether Aberdeenshire should move to Level 3, the arguments had not been conclusive, especially in comparison with Aberdeen City (which would remain at Level 2). The First Minister therefore proposed that all Scotland's other local authority areas should, for the present at least, remain at the same level as the previous week.

24. In presenting the changes, it would be important to emphasise that any move to Level 4 was always intended to be a short, sharp measure – indeed, it should be seen as the fastest route for some areas to reach Level 2, as noted at the previous week's meeting of the Cabinet (*SC(20)43rd Conclusions refers*). The moves to Level 4, though undoubtedly very difficult for many people, should be presented as providing the best opportunity for any sort of relaxation over the festive period, even though no promises could be made at the present time. Experience of COVID-19 had, however, shown that the longer difficult issues were left unresolved, the harder it became to address them in future.

25. In discussion the following points were made:

(a) The proposals set out in the paper were welcome: while implementation of Level 4 restrictions for a number of local authorities in the Central Belt would not be straightforward (and a number of questions of detail remained to be resolved), the package of measures was on balance proportionate, appropriate under the current difficult circumstances, and justified in light of the evidence presented;

(b) From an economic perspective, it seemed likely that it might be more harmful for an area to spend longer at Level 3, rather than a short time at Level 4, however difficult Level 4 was likely to be for all businesses, their staff, and the self-employed. The business support measures set out in the paper were therefore especially welcome, for without the means to provide additional mitigation of economic harm, any move to Level 4 would be hard to justify in terms of the Four Harms analysis;

(c) Proposals for a dedicated source of financial support to mitigate the wider harms caused by applying higher levels of protection to suppress the virus were also to be welcomed. These proposals, which should result in a flexible fund for local authorities moving into Level 4 to meet emergent needs, would form an essential element of a wider set of winter measures to counter the social harms caused indirectly by COVID-19. It would be important to be clear with local authorities about the purposes for which this funding was intended;

(d) Public communications should emphasise the time-limited nature of the proposed Level 4 restrictions, since this would undoubtedly aid public understanding, acceptance, and compliance, especially in the run-up to the festive period. People needed to have confidence that this would be a short, sharp period of additional measures, which would end as soon as possible;

(e) Consideration should be given to how best to help non-essential retail businesses in Level 4 areas, since the majority of their Christmas trade would now be concentrated in the short period from 11 December onwards (assuming that Level 4 restrictions were lifted then);

(f) The proposed moves into Level 4 were justified from a clinical perspective, especially considering projected hospital and ICU capacity over the coming period: in a normal year, around a thousand beds would be set aside for winter pressures, but 2020-21 was likely to require double or triple that number. A doubling in ICU capacity was not cost-free for other parts of the NHS, as staff and clinical resources to address non-COVID conditions would become scarcer as a result;

(g) A case could be made (in line with the view reached by the NIMT) that North Ayrshire should be assigned to Level 4 at the same time as East and South Ayrshire, despite the differences in local indicators and trends (as shown in the latest 'watch list' report provided to Cabinet). For example, in clinical terms, services across the whole of the NHS Ayrshire and Arran were closely integrated: Crosshouse Hospital in East Ayrshire provided services to both North and East Ayrshire, and some staff from Crosshouse had recently transferred to Ayr Hospital (in South Ayrshire) to address COVID pressures;

(h) It was also the case that Irvine, the main town in North Ayrshire, was a shopping centre for many from outside the local authority area, and compliance with travel restrictions would be especially important if a decision were taken to allocate East and South Ayrshire to Level 4 but to leave North Ayrshire at Level 3. On the other hand, North Ayrshire also bordered Inverclyde, which was due to remain at Level 3;

(i) The question of whether to keep North Ayrshire in Level 3 remained finely balanced, and the First Minister undertook to give further consideration to the various competing arguments before her planned statement to the Parliament that afternoon, provided Cabinet was content to remit to her the final decision;

(j) As had been shown to be the case following the recent introduction of a statutory requirement to wear face coverings in defined public settings, creating legal restrictions on travel should have a deterrent effect for the majority of the public, and Police Scotland had undertaken to enforce such a requirement as effectively as possible, with due regard to the need to be proportionate in its application (and recognising that such measures would, by their nature, raise practical enforcement difficulties, given the difficulty of defining what constituted essential travel and the extent of a reasonable excuse under any given circumstance);

(k) To gain public acceptance for new travel restrictions, it might be helpful if, as on a number of previous occasions, the Chief Constable were to join the First Minister at one of the daily briefing sessions on the COVID-19 emergency;

(l) It would be important for the retail and hospitality industries to have as much certainty as possible about the future direction: it would be a hard decision for many whether it would be economically worthwhile to re-open at all in the period between the projected end of the Level 4 restrictions around 11 December and Christmas. Added to this, the tourism industry faced even harder dilemmas than most others, and Ministers' close engagement with tourism leaders would continue as a priority. Providing as much practical and financial support as possible to each of these sectors would be all the more vital in light of the gravity of the current situation;

(m) The proposal to delay commencement of the Level 4 restrictions until 6.00 p.m. on Friday, 20 November seemed a sensible one in light of the need to avoid any possible difficulties caused by commencing regulations in the course of a school day.

26. **Cabinet:**

(a) Agreed, as a result of the second weekly review of the allocation of protection levels under the Strategic Framework:

(i) That Glasgow City, Renfrewshire, East Renfrewshire, East and West Dunbartonshire, North and South Lanarkshire, East and South Ayrshire, Stirling and West Lothian should move from Level 3 to Level 4 from Friday, 20 November;

(ii) That East Lothian and Midlothian should move from Level 3 to Level 2 from Tuesday, 24 November;

- (iii) To delegate to the First Minister the final decision as to whether North Ayrshire should remain at Level 3 for the time being, taking into account the points made in discussion at Cabinet;
- (iv) That all other areas should be maintained at their existing protection levels for the time being;
- (b) Agreed to delegate to the First Minister all other decisions that might be required in advance of her planned statement to the Parliament later that day;
- (c) Noted the intention to implement travel restrictions through regulations, in order to mitigate the risk to the levels-based approach arising from the importation of infection from areas of higher incidence and prevalence;
- (d) Noted the proposals for additional financial support which had been designed to mitigate the wider impacts of applying higher levels of protection to suppress the virus and which were described further in the paper;
- (e) Noted that future reviews of protection levels would also consider proposals for the coming Christmas period, the content of levels, and the strategic approach to the period between the start of 2021 and the availability of a vaccine; and
- (f) Agreed that all necessary actions should be put in hand to ensure that the necessary changes to regulations, guidance and advice would be in place so that the changes in the content and application of the Strategic Framework described above could be announced by the First Minister in the Parliament that afternoon, and publicised, implemented, and enforced from Friday, 20 November onwards.

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

*[The First Minister left the meeting. The Deputy First Minister took the chair.]*

#### **Parliamentary Business (Paper SC(20)133)**

27. Mr Dey outlined the planned business in the Parliament during the weeks commencing 16, 23 and 30 November and 7 December, as set out in the tables in Annex A of paper SC(20)133. He noted that the Parliament's COVID-19 Committee had rejected the proposed approach for scrutinising Scottish Government regulatory changes to local restrictions and had instead called for a Parliamentary debate on Scotland's Strategic Approach on Thursday, 19 November.

28. It was noted in discussion that there was no reason to object to the proposal for MSPs to scrutinise the Government's plans for amending local restrictions through a Parliamentary debate. Such a debate would allow the views of each party to be aired fully and would expose any contradictions in the arguments put forward by opposition parties.



29. **Cabinet agreed** the planned business in the Parliament for the weeks commencing 16, 23 and 30 November, subject to any changes that might be required.

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

**SCANCE (Paper SC(20)134)**

30. The Deputy First Minister introduced the SCANCE paper (SC(20)134). In discussion of current issues, Cabinet's attention was drawn to the following matters:

***COVID-19 Testing of Students***

31. Mr Swinney updated Cabinet on the work under way to plan for the testing of college and university students in order to allow them, if possible, to return home for the Christmas break (*SC(20)43rd Conclusions refers*). Work was progressing at pace to ensure that the necessary testing infrastructure would be in place in good time, and progress was being monitored on a daily basis.

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**Irrelevant & Sensitive**

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(a) Given the concurrent risks presented by EU Exit and COVID-19, Ministers would need to maintain continuous dialogue on the Scottish Government's response to both challenges. Careful scrutiny would be required of any deal that might be agreed between the UK and the EU;

# Irrelevant & Sensitive

## ***Scottish General Election (Coronavirus) Bill***

42. Mr Dey noted that the Scottish General Election (Coronavirus) Bill had been introduced to Parliament on Monday, 16 November. The Standards, Procedures and Public Appointments Committee would be holding a Stage 1 evidence session on Thursday, 19 November. The Bill was following an expedited timetable, and the intention was that it should complete all its stages before Christmas.

43. There was provision in the Bill for a power which would allow the election to be held over two successive days if necessary. The Electoral Commission was pushing for early certainty about whether or not the Scottish Government intended to use this power, should it be agreed by the Parliament.

44. Following discussions with the Electoral Commission the previous week, Mr Dey had asked the Electoral Management Board to canvass the views of Returning Officers on the practicalities of running the poll, given the localised planning they had done to establish if the election could be delivered safely over a single day. If there was a clear view from them that two days might be needed, the Government could consider introducing an amendment at Stage 2 to provide for this.

45. Mr Dey undertook to keep Cabinet apprised of developments and to return to Cabinet with any matters that might require further collective discussion.

**(Action: Minister for Parliamentary Business and Veterans; Constitution and Cabinet Directorate)**

## **Any Other Business**

46. None.

Cabinet Secretariat  
November 2020