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RESTRICTED HANDLING

SC(21)2nd Conclusions

SCOTTISH CABINET

**MINUTES OF MEETING HELD IN ST ANDREW'S HOUSE, EDINBURGH
AT 9.30 AM ON TUESDAY, 12 JANUARY 2021**

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 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
	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 (*)
In Attendance:	Leslie Evans	Permanent Secretary (*)
	LPP	LPP
	Graeme Dey MSP	Minister for Parliamentary Business and Veterans (*)
	Ash Denham MSP	Minister for Community Safety (*)
	Dr Gregor Smith	Chief Medical Officer
	Caroline Lamb	Director-General Health and Social Care (*)
	Ken Thomson	Director-General Constitution and External Affairs (*)
	Penelope Cooper	Director of Outbreak Management (*)
	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
	Alisdair McIntosh	Strategic Adviser, Outbreak Management (*)
	Liz Lloyd	Special Adviser
	Stuart Nicolson	Special Adviser (*)
	Aileen Easton	First Minister's Official Spokesperson (*)
	Amanda Gordon	Deputy Director, Outbreak Management Policy (*)
	Chris Mackie	FM COVID Briefing Unit (*)
	NR	First Minister's Policy and Delivery Unit (*)
	NR	PS/First Minister (*)
		PS/First Minister (*)
		Cabinet Secretariat (*)
		Cabinet Secretariat (*)
		Cabinet Secretariat (*)

(*) by tele-conference

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1. Apologies were received from Mr Yousaf; he was represented by Ms Denham.

Minutes of Meeting held on 4 January 2021

2. The minutes of the meeting held on 4 January (SC(21)1st Conclusions) were approved.

Parliamentary Business (Paper SC(21)04)

3. Mr Dey outlined the planned business in the Parliament during the weeks commencing 11, 18 and 25 January and 1 February, as set out in the tables in Annex A of paper SC(21)04. He noted that he continued to press, at Bureau, for as much business as possible to be conducted virtually, in order to set a good public example at this phase of the pandemic. Other Bureau members took a range of views, and the Presiding Officer was not generally in favour of virtual proceedings.

4. **Cabinet agreed** the planned business in the Parliament for the weeks commencing 11, 18 and 25 January, subject to any further changes that might be required.

(Action: Minister for Parliamentary Business and Veterans)

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

5. The First Minister invited the Chief Medical Officer and Ms Freeman to provide Cabinet with an update on the progress of the COVID-19 pandemic and the work under way to counter its effects. There were as yet no daily statistics on new cases or testing. Over the previous week, numbers of new cases had remained broadly stable at a very high level of around 2,000 new cases per day. The seven day cumulative incidence for Scotland as a whole was between 292 and 299 per 100,000 population. This compared with figures of 446 per 100,000 for Wales, 629 for England and 631 for Northern Ireland.

6. The proportion of new tests showing the S-gene dropout, which was thought to indicate the new variant of the virus, now stood at 61.9 per cent of all tests processed through the Lighthouse laboratory in Glasgow. This implied that, as feared, the more transmissible strain was now dominant, with all that this implied for protection measures. Analysis to date had shown that this did not imply more severe disease or increased need for hospital treatment.

7. The National Incident Management Team had noted that there were currently two age groups showing increasing incidence of the virus: those of working age and the over 80s. For those of working age, workplaces and car sharing had been shown to remain of particular concern. The under 19s and 60-79 age groups were showing relatively lower levels of increase; in the case of children and young people, it was possible that this was because of decreased time spent in each other's company now that learning was on a virtual footing. Despite the increased transmissibility of the new variant, this did not appear to vary according to age.

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8. There were early signs that the lockdown might be starting to have some effect: the rapid increase in case numbers seen around the turn of the year seemed to have slowed down and begun to stabilise, albeit at too high a level. There was, however, no room for any complacency, and certainly no reason to relax any restrictions at this point. The time lag between initial infection and serious illness also meant that, even if new case numbers were stabilising, the number of people requiring hospitalisation was likely to continue to rise for some time to come, maintaining the already very high levels of pressure on the country's health services.

9. Further evidence would be required to establish whether case numbers were being contained at current high levels, or whether they were now likely to begin to fall in response to the renewed 'lockdown' restrictions. The incubation cycle of the virus meant that the effect of any increased mixing over Christmas would already be reflected in current case numbers; it was therefore hoped that upward pressures would relent somewhat in the near future.

10. Ms Freeman noted that there had been an increase in the hospitalisation of COVID-19 patients, which now stood at the highest rate in the pandemic to date, with a 40 per cent increase in the 11 days since the beginning of 2021. NHS Boards had reported 1,664 patients in hospital on Sunday, 10 January with recently confirmed COVID-19, including 126 in Intensive Care Units (ICUs). This exceeded the previous peak of 1,520 in-patients in April 2020.

11. There were still fewer COVID-19 patients in ICU beds (126) than the peak level of around 200 in April 2020, but there had been an alarming growth rate of some 80 per cent since the turn of the year. There were currently a total of 250 ICU patients across the country, compared with a normal capacity of around 180 beds. Boards were employing a variety of measures to cope with additional demand for ICU capacity, including reducing staffing ratios to cover more beds and using theatres and recovery areas for physical expansion, with obvious implications for the capacity to carry out elective and emergency surgery. All mainland Boards had already cancelled or were about to cancel routine elective procedures.

12. The previous day, seven hospital sites had been above 90 per cent of their total acute bed occupancy: once a site was above 85 per cent occupancy, it was much more difficult to admit patients to the correct specialty, and queues were likely to build up in Accident and Emergency Departments. In short, if the rate of increase in case numbers seen over the previous fortnight were to continue unchecked, there would be a real risk of the NHS being overwhelmed, even with contingency plans in place. Although there remained some physical capacity to expand ICU services, the major constraints on capacity came from staffing. More generally, changes in infection control rules as a result of developing knowledge about how COVID-19 was transmitted meant that there could be fewer beds in a given space.

13. There were concerns that the inevitable backlog in non-COVID health services meant that some conditions might remain undiagnosed. In order to reduce this risk, work was going on to identify undiagnosed cancer patients from among the significant and growing backlog of 180,000 outpatients, so that they could receive treatment as soon as possible.

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14. It was those Boards with the highest numbers of COVID-19 patients which were seeing the biggest rise in the average length of stay: this also had a very high impact on patient volumes and bed shortages.

COVID-19: Strengthening Current Lockdown Arrangements (Paper SC(21)05)

15. Mr Swinney introduced paper SC(21)105, which invited Cabinet to consider further tightening the lockdown restrictions to ensure that they were effective as they needed to be in suppressing the virus. The changes proposed, although significant in themselves, represented refinements of the existing set of restrictions rather than wholly new measures. The focus of the changes was on keeping people in their homes (by reducing the legitimate reasons for doing so) and, if they needed to leave, keeping them safe.

16. Evidence from sources such as traffic flow monitoring showed that people were still leaving their homes more frequently than would be desirable, and more people appeared to be meeting each other outdoors to socialise than in spring 2020. In addition, fewer people were working at home than ought to be capable of doing so (in comparison with the spring lockdown), suggesting that parts of the economy were operating at a higher level of activity than might be considered safe. Some businesses with an essential element were continuing to operate non-essential elements (such as new car showrooms), and a few were taking a laxer approach than previously, pushing at the boundaries of restrictions. Although there was some anecdotal evidence that compliance levels might be improving among the general public, messaging and, where required, enforcement still needed to be pursued with renewed vigour, so as to tilt the balance still further in favour of public safety (and taking account of the increased transmissibility of the new variant).

17. In discussion the following points were made:

(a) The analysis and proposed approach set out in the paper provided a good description of the current situation and what might be done to tackle it. The key objective must be, at this point, to reinforce the stay at home guidance and define as closely as possible what constituted an essential purpose for going out;

(b) The paper took a common sense approach and should send the right message if communicated effectively. In terms of public messaging, although the changes proposed were technically at the margins of existing restrictions, it would be important not to describe them as 'marginal', given their serious implications for the businesses concerned;

(c) The approach to 'click and collect' services set out in the paper at Annex B appeared sensible. The draft list of non-essential items for which 'click and collect' should still be permitted, subject to certain conditions, currently included clothing and footwear, homewares, garden centres / plant nurseries, baby equipment, electrical goods (including repairs), and key cutting and shoe repair;

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- (d) However, there was an important omission from permitted 'click and collect' retailers at Annex B: booksellers. Books were essential for mental wellbeing (especially at a time when many were suffering social isolation) as well as for their wider educational benefits, and the supply of reading material should not be restricted at this time;
- (e) For practical reasons, including ease of enforcement, it would probably be sensible to specify classes of retailer, rather than particular items. Careful drafting would be required to ensure maximum clarity, particularly having regard to the problems experienced by retailers in Wales in autumn 2020, when lack of clarity had damaged the credibility of the rules;
- (f) More generally, enforcement of the rules for non-essential retail would be vital, and both Police Scotland and local authority Environmental Health Officers (EHOs) would continue to have an essential role to play in ensuring that the rules were properly understood and observed;
- (g) It was unfortunate that the resources available to EHOs were currently under added strain because of the concurrent difficulties caused by the end of the EU transition period on 31 December and the consequent need to ensure compliance with the terms of the UK's new trade deal with the EU;
- (h) Engagement and information should achieve higher levels of compliance with the new legal requirement to work from home wherever possible. It would be helpful to see statistics showing the proportion of people working from home, analysed according to occupation, and to engage further with business organisations to ensure that employers were doing as much as possible to ensure that home working was facilitated to the maximum extent;
- (i) Anecdotal evidence suggested that more small businesses engaged in non-essential services were operating than in the spring 2020 period of lockdown. The same appeared to be the case for some call centres. The measures proposed in the paper to reduce further the need for direct contact between people were therefore welcome, although it would also be important to ensure that adequate business support measures remained in place;
- (j) Ms Forbes' announcement, the previous day, of additional business support measures was very welcome in this regard: compliance would be easier to achieve if businesses were aware of the support they could obtain, and the rapid availability of support should reduce the temptation on businesses to remain open;
- (k) The new requirement to ensure that incidental activities were not added to a journey outside the home for essential purposes was welcome. It was clear that, at present, a number of people were congregating in public spaces to an extent that appeared inconsistent with daily exercise or other permitted purposes, and tightening regulations in this regard should send a valuable message to the public (however difficult it might be to enforce this requirement);

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(l) When imposing new requirements on businesses, it would remain very important to ensure that the evidence was there to justify the measures and that any new restrictions were proportionate and equitable between sectors, so as to diminish the likelihood of successful judicial review.

18. Cabinet agreed:

(a) The recommendations for tightening current lockdown measures, as set out in the paper in paragraphs 20 to 31 and at Annexes B and C:

- A. To tighten the stay at home regulations so that people would no longer be allowed to remain outside the home other than for permitted purposes;
- B. To prohibit 'click and collect' for all closed retailers, except for those on a limited list (based on the list at Annex B, but with the addition of booksellers);
- C. To allow takeaway food to be allowed to be provided only on a 'no-entry' basis, for either pre-order or walk-up;
- D. To introduce regulations banning the consumption of alcohol in a public place in all local authority areas;
- E. To issue statutory guidance to employers and service providers immediately to set out what was required of them and to remind them that, at the very least, people who worked from home in March should again do so now;
- F. to encourage and support more robust challenge to businesses that were still open, with a greater focus on enforcement;
- G. To extend regulations so that the 'work' exemption for gathering in a private dwelling could only be used where the work is necessary for the essential upkeep, maintenance and functioning of the household;

(b) To delegate to the First Minister all other decisions that might be required in advance of her planned statement to the Parliament on Wednesday, 13 January;

(c) That all protective measures applicable in all parts of Scotland should be kept closely under review and that further changes in the short term should not be ruled out;

(d) Pursuant to (c) above, to delegate to the First Minister and Mr Swinney the responsibility for any further decisions that might be required, should there be a material change of circumstances in any local authority area, or nationally, before the next planned review of protective measures;

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(e) That all necessary actions should be put in hand to ensure that the required changes to regulations, guidance and advice were in place so that the necessary further emergency measures could be announced by the First Minister in the Parliament on 13 January, and publicised, implemented, and enforced as planned.

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

SCANCE (Paper SC(21)106)

19. The First Minister introduced the SCANCE paper (SC(21)106). In discussion of current issues, Cabinet's attention was drawn to the following matters:

Technical fault with Microsoft Teams

20. Mr Swinney updated Cabinet on the issues that some users had experienced when trying to access Microsoft Teams within 'Glow', Scotland's national digital learning environment. These issues were not exclusive to Glow and had been caused by technical problems within Teams which had affected users across northern Europe. At 4 p.m. the previous day, Microsoft had reported that the issue had been resolved and that the service was operating as normal. Since then, no further problems had been reported.

Business Support Grants

21. Further to the item in paper SC(20)06 concerning Business Support Grants, Ms Forbes updated Cabinet on the work that was under way to ensure that payments were issued to businesses as quickly as possible.

22. It was noted in discussion that it would be helpful if a brief summary, detailing all COVID-19 business grant schemes and how much had been paid out under each heading, could be provided to all Ministers to assist them in communicating the range and scale of support available to businesses affected by the pandemic.

(Action: Cabinet Secretary for Finance; Economic Development Directorate)

Health Statistics

23. In relation to the item in paper SC(21)06 concerning health statistics, Ms Freeman noted that the third quarter of 2020 had seen significant quarterly increases in infection rates for both *Clostridioides difficile* (up 28.9 per cent) and *Escherichia coli* bacteraemia (up 26.6 per cent). Normal seasonal variation might have been a factor in these increases, but further investigations were under way, and results would be reported to Ms Freeman as soon as possible.

OFFICIAL-SENSITIVE***Self-Isolation Support Grant and Scottish Welfare Fund***

24. Further to the item in paper SC(21)06 concerning the publication of the latest Scottish Welfare Fund and Self-Isolation Support Grant management information, Ms Somerville said that, in November 2020, 67 per cent more Self-Isolation Grants had been awarded than in the previous month.

25. The rate of awards to applications was 29 per cent, up from 23 per cent in October. It was likely that the relatively low proportion of applications that resulted in awards was due to local authorities receiving large numbers of speculative applications which did not meet the eligibility criteria. Work was under way to investigate whether there might be scope to widen the eligibility criteria, but this would obviously increase the cost of the scheme.

26. The Scottish Welfare Fund was still seeing high demand for Crisis Grants, with local authorities receiving some 23,000 applications in November, 34 per cent higher than in the same month the previous year.

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Any Other Business

36. None.

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