

OFFICIAL-SENSITIVE

RESTRICTED HANDLING

SCN(21)16th Conclusions

SCOTTISH CABINET

**MINUTES OF MEETING HELD IN ST ANDREW'S HOUSE, EDINBURGH AT
9.30 AM ON TUESDAY, 28 SEPTEMBER 2021**

Present:	Rt Hon Nicola Sturgeon MSP John Swinney MSP	First Minister Deputy First Minister and Cabinet Secretary for Covid Recovery (*) (<i>part of meeting only</i>)
	Keith Brown MSP	Cabinet Secretary for Justice and Veterans
	Kate Forbes MSP	Cabinet Secretary for Finance and the Economy (*)
	Mairi Gougeon MSP	Cabinet Secretary for Rural Affairs and Islands
	Rt Hon Angus Robertson MSP	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	Cabinet Secretary for Education and Skills
	Humza Yousaf MSP	Cabinet Secretary for Health and Social Care
In Attendance:	Leslie Evans LPP	Permanent Secretary (*) LPP
	George Adam MSP	Minister for Parliamentary Business
	Mairi McAllan MSP	Minister for Environment and Land Reform
	Dr Gregor Smith	Chief Medical Officer (*)
	Paul Johnston	DG Communities (*)
	Ken Thomson	DG Constitution and External Affairs (*)
	Penelope Cooper	Director, Covid Co-ordination (*)
	James Hynd	Director for Cabinet
	LPP	LPP
	Dominic Munro	Director, Exit Strategy (*)
	David Rogers	Director, Constitution
	Shirley Rogers	Director, Organisational Readiness (*)
	Clare Hicks	Deputy Director, Covid Recovery (*)
	Marian McCormack	Deputy Director, Covid Ready Society (*)
	Michelle Rennie	First Minister's Principal Private Secretary
	Elizabeth Sadler	Deputy Director, Covid Ready Society (*)
	Lisa McGuinness	Permanent Secretary's Principal Private Secretary(*)
	Kate Higgins	Special Adviser (*)
	Colin McAllister	Special Adviser
	Callum McCaig	Special Adviser (*)
		First Minister's Official Spokesperson (*)
		PS/First Minister (*)
		Assistant Head of News (*)
		Unit Head, Covid Status Certification (*)
		FM Covid Briefing Unit (*)
		First Minister's Policy and Delivery Unit (*)
		DPS/Deputy First Minister and Cabinet Secretary for Covid Recovery (*)

NR

SCN(21)16th Conclusions

1

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

NR

Cabinet Secretariat
 Cabinet Secretariat (*)
 Cabinet Secretariat (*)

(*) *by tele-conference***Apologies**

1. Apologies were received from Mr Matheson. He was represented by Ms McAllan.

Minutes of Meeting held on 21 September 2021

2. The minutes of the meeting held on 21 September (SCN(21)15th Conclusions) were approved.

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

3. 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.

4. As at 9 a.m. on Tuesday, 28 September, there had been 560,334 confirmed cases of COVID-19 infection in Scotland (compared with 538,819 on the same day the previous week). There had been a net increase of 2,370 cases compared with the previous day, which corresponded to 10.6 per cent of those tested (compared with a positivity rate of 11.7 per cent on the same day the previous week). Since the previous day, some 16 further deaths 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 8,551 (compared with the previous week's figure of 8,396).

5. The seven-day moving average continued to show an encouraging reducing trend in new cases. The figure as at 24 September was 2,197, some 20 per cent lower than the previous week's figure of 2,961 and 44 per cent lower than the figure of 5,729 a fortnight before. The day with the peak level of cases was 2 September (at 7,523), and the peak seven-day average level had been recorded on 6 September.

6. Over the previous few days, there had been a slight rise in the proportion of new cases among those aged over 60, compared with a slight reduction among under 20s. New cases were also falling less fast among women aged between 25 and 44, and it was thought that this might be explained by caring duties (both for children and older relatives). It was important to bear in mind that changes in the proportion of new cases represented by particular age groups must be set in the context of falling absolute case numbers across all age groups.

7. The average number of new cases over the previous seven days had been 409 cases per 100,000 population, with a test positivity rate of 8.9 per cent. Only six local authorities still had case rates over 500 per 100,000.

OFFICIAL-SENSITIVE

8. Compared with the rest of the UK, case numbers per 100,000 population (with a five-day lag) were: Wales 639, Scotland 430, Northern Ireland 418, and England 314 – generally higher figures for the rest of the UK reflected the later start of the school year than in Scotland. Wales continued to show the highest rates of increase.

9. Hospital admissions for COVID-19 were falling back: the most recent seven-day moving average was 123 admissions per day, compared with 158 on 13 September, and the peak day in the current wave had been 7 September, with 895 new cases. Beds now occupied by COVID-19 patients numbered 1,063, with 863 admissions over the previous seven days, and 1,062 during the previous week. Intensive Care Unit occupancy was also following a similar trajectory. Overall, hospital admissions and occupancy were either plateauing or on a gradual downward trend.

10. Although the picture was generally improving, it was noted in discussion that pressure on health and care services continued to be extreme, and the system was in many respects at or near capacity limits.

COVID-19: Review and Response (Paper SCN(21)44)

11. Mr Swinney introduced paper SCN(21)44 which provided Cabinet with a review of the state of the epidemic and again recommended the maintenance of the current statutory regime, provided adherence to the existing set of 'baseline' measures could be assured; it was not proposed to re-impose further statutory restrictions at this point. The paper also noted that, if the planned certification scheme (*see below*) did not go ahead as planned from Friday, 1 October, the existing statutory measures on capacity limits would need to be retained.

12. There were no plausible arguments in favour of changing the current set of restrictions, and nor was there a case for additional measures (aside from the planned certification scheme), but case rates remained too high in absolute terms, and there would be no justification for any relaxation at the present time. In tackling the current situation, baseline measures remained of critical importance, and the importance of compliance must continue to be given due emphasis in public messaging and communications with stakeholders.

13. It was noted in discussion that the current set of measures, including face coverings and gathering of details, appeared both reasonable and proportionate in relation to the current improving, but high, levels of infection, and there was no reason to depart from the conclusions set out in the paper.

14. Cabinet:

(a) Agreed that the statutory measures listed at paragraph 25 of the paper should be retained at this time;

(b) Agreed that, in the event that the planned certification scheme did not go ahead as planned on 1 October, the existing statutory measures on capacity limits should also be retained;

OFFICIAL-SENSITIVE

- (c) Noted the updated information contained in the paper on the course of the epidemic;
- (d) Noted the updates on schools and on communications activities provided in the paper;
- (e) Delegated to the First Minister any relevant final decision-making ahead of her statement to the Parliament on COVID-19 on the afternoon of Tuesday, 28 September; and
- (f) Agreed to continue to delegate to the First Minister any further urgent decisions which might be required prior to the following week's meeting of the Cabinet (provided they were consistent with the *Strategic Framework*), supported as required by the Gold Group structure of key Ministers and by any other Ministers with an interest, with input from LPP [REDACTED] chief advisers and senior lead officials.

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

Covid Vaccine Certification (Paper SCN(21)46)

15. Mr Swinney introduced paper SCN(21)46 which invited Cabinet to decide whether, given the current state of the pandemic as set out in paper SCN(21)44 (see *above*), the Covid Vaccine Certification scheme remained necessary to deliver its stated policy aims, and if so, to agree the date on which it should come into force, as detailed further in Annex A of paper SCN(21)46. In addition, the further Annexes to the paper brought together a comprehensive set of impact assessments and evidence papers to support Cabinet's consideration. Once in force, the scheme would be subject to a three-week review, on the same dates as other statutory measures.

16. The current state of the pandemic in Scotland (*as discussed above*) did not alter the justification for implementing the current proposals for a vaccine certification scheme, which remained valid.

17. One of the main goals of the scheme would be to help drive vaccination rates as high as possible, in order to save lives and protect the NHS while, at the same time, keeping Scotland's economy as open as possible.

18. There remained two particular points for Cabinet to consider in reaching views about the timing of coming into force of such a scheme. The main remaining issue was to decide whether the scheme should come into effect as planned, at 5 a.m. on Friday, 1 October, but with the legal enforcement provisions only coming into force a fortnight later – on or around Monday, 18 October. This would allow businesses, including entertainment venues and football clubs, the opportunity to prepare more fully without the risk of enforcement action.

OFFICIAL-SENSITIVE

LPP



20. A second, less significant question was whether to delay the initial date of coming to effect from Friday, 1 to Monday, 4 October, thereby avoiding implementation over a weekend, when the scheme was likely to be under heavier demand, with higher numbers likely to attend nightclubs and other affected venues, and taking account of some significant sporting fixtures. This aspect was essentially a matter of practical and pragmatic judgement for Cabinet and did not raise any issues in respect of lawfulness.

21. Aside from these two points, the scheme remained consistent with the proposals seen previously by Cabinet (*SCN(21)12th to 14th Conclusions refer*) and which the Parliament had approved in a vote following the debate on vaccine certification held on 9 September.

22. In discussion the following points were made:

(a) The proposal to delay enforcement action until two weeks or so after initial implementation seemed a sensible one: a fortnight's 'grace period' should allow businesses to get used to the practical operation of the scheme and its administration without venues facing the threat of legal action;

(b) A further option might be to delay the implementation of the entire scheme until 18 October – or even a later date – but this would simply prolong the current situation and would also reduce the public credibility of the Government's future commitment to the introduction of a certification scheme, which would be seen as not serious. Further delay might be counter-productive – not least given the public health imperative to maximise vaccination rates as fast as possible;

(c) The risk of litigation would always be present in such cases, but the Government's willingness to reach a pragmatic compromise, having listened carefully to what businesses and others had to say, should strengthen Ministers' position in case of legal challenge;

(d) A staged approach to the introduction of enforcement provisions and the associated criminal sanctions – with a grace period until around 18 October – would appear to be reasonable and proportionate, which should serve to mitigate legal risks to some extent;

(e) Such a move would be consistent with a general 'rule of law' approach, which required sufficient notice to be given of changes in rules, publication of guidance and the introduction of new sanctions, so as to allow all those potentially affected to make adequate preparations;

OFFICIAL-SENSITIVE

(f) As time went on, it was possible that the numbers of people coming forward for vaccination might diminish (probably in the context of a continuing downward trajectory in case numbers) to the point where the effectiveness of a certification scheme in persuading people to get vaccinated might fall away. At that point, consideration might be given to whether negative test status might be added to double vaccination as an alternative criterion for entry to venues, or whether, on balance, a certification scheme was still an appropriate measure;

(g) More broadly, the need to take account of changing circumstances was one of the reasons why the scheme would be subject to formal review every three weeks, to ensure the scheme continued to be reasonable and proportionate in its application;

(h) It was to be hoped that the announcement of a fortnight's grace period in the implementation of enforcement provisions would be welcomed, at least by some of the affected businesses: some had complained that, while the Government was engaging with them, it was not taking sufficient account of their views; however, others seemed more willing to see the scheme work in practice. The grace period was a significant concession and it should serve to demonstrate Ministers' pragmatism and willingness to take external views into account;

(i) Many of the larger football clubs, as well as the Scottish Football Association and the Scottish Premier Football League, appeared to be beginning to take a more constructive approach to the question of certification as part of moves to make stadiums as COVID-safe as possible;

(j) Even if the introduction of the scheme were to be delayed from 1 to 4 October, it would be helpful if larger football clubs could take preparatory steps at games planned for the coming weekend, to increase public awareness of the need for continued caution in crowded environments, and engagement with football clubs and other sporting organisations should continue;

(k) A late decision to delay the start of the scheme itself from 1 to 4 October might cause some uncertainty among the public and affected businesses. Polling had shown that there was a very high degree of awareness of 1 October as the initial implementation date for the scheme, and it would therefore seem sensible not to change this;

(l) Under this approach, the two material dates would be 1 October, for initial implementation, and 18 October for enforcement, and this should be a relatively straightforward public message to convey: the Government's substantive concession was the delay in the enforcement date, and all other aspects would remain the same;

OFFICIAL-SENSITIVE

(m) The fact that the necessary software application (App) was only expected to be available for download on Thursday, 30 September was a further argument in favour of a grace period before the implementation of enforcement provisions;

(n) Confidence in the technology used to support any certification system would be of vital importance. Much work had already gone into ensuring that the App could be implemented from 30 September, as planned, and assurances had been received from officials that all was on track at this point. Mr Yousaf undertook to provide the First Minister with a further update on progress with technical aspects before her planned statement to the Parliament that afternoon;

(o) Ahead of the First Minister's statement, it would also be helpful to ensure that representatives of the Scottish Green Party parliamentary group were adequately sighted on the Government's plans.

23. Cabinet:

(a) Agreed that, given the current state of the pandemic as set out in paper SCN(21)44: Covid-19: Review and Response, the Covid Vaccine Certification scheme remained necessary to deliver the stated policy aims;

(b) Agreed that, taking into account the public health imperative of introducing the scheme as quickly as possible, the scheme should commence, as planned, at 5 a.m. on Friday, 1 October, but that the enforcement provisions in the regulations should only come into effect from a date on or around Monday, 18 October; and

(c) Delegated to the First Minister any relevant final decision-making ahead of her statement to the Parliament on COVID-19 on the afternoon of Tuesday, 28 September.

(Action: First Minister; Deputy First Minister and Cabinet Secretary for Covid Recovery; Cabinet Secretary for Health and Social Care; Covid Public Health Directorate)

Covid Recovery Strategy: Final Draft (Paper SCN(21)45)

24. Mr Swinney introduced paper SCN(21)45 which invited Cabinet to comment on and approve the draft Covid Recovery Strategy, which was due to be published on Tuesday, 5 October 2021. The Strategy had been developed following extensive dialogue across civic society, including the Citizens' Assembly, the Social Renewal Advisory Board and regular survey work.

25. The Strategy focused on addressing the significant harms caused by the pandemic, especially for those who were already suffering the highest degrees of socio-economic disadvantage. The essential goal was to tackle the systemic inequalities in Scottish society which had existed before Covid, but which had been exacerbated by the pandemic.

OFFICIAL-SENSITIVE

26. The priority outcomes targeted by the Strategy included: financial security for low income households; the wellbeing of children and young people who had been significantly disadvantaged by the pandemic; good, green jobs and fair work; and rebuilding person-centred public services in that context.

27. The Strategy would need to guide all Government actions across the full range of portfolios, and dialogue with the public sector in general and with local government was also under way, including a new joint programme board with COSLA (modelled on the structures used successfully to implement the recent expansion of Early Learning and Childcare).

28. Mr Swinney intended to make a statement in the Parliament the following Tuesday to mark the publication of the Strategy, and a debate would follow shortly after the October recess.

29. It was noted in discussion that, alongside the Strategy's central emphasis on green skills and the climate emergency, as well as the need to drive out systemic poverty, it would be helpful to see closer links made with the Government's commitment to a just transition and, in that context, to ensure that measurable progress was made towards that objective.

30. **Cabinet agreed** approved the text of the draft Covid Recovery Strategy, subject to any final amendments that Mr Swinney might wish to make ahead of publication on 5 October.

**(Action: Deputy First Minister and Cabinet Secretary for Covid Recovery;
Economic Development Directorate)**

Irrelevant & Sensitive

OFFICIAL-SENSITIVE

Irrelevant & Sensitive

Health Statistics

37. In relation to the item in paper SCN(21)47 concerning health statistics, Mr Yousaf said that a range of work was under way to try to alleviate the significant pressures currently being faced by health and social care services in Scotland.

38. In discussion the following points were made:

(a) While the NHS remained under severe pressure, there were early signs that the mitigations being put in place by the Scottish Government were starting to have a positive impact in relation to demand management, including in relation to the Scottish Ambulance Service;

(b) Very careful management would be required to ensure that an already stretched health service was not overwhelmed by increased demand associated with large numbers of people attending the COP26 climate change conference in Glasgow in November.

(Action: Cabinet Secretary for Health and Social Care; Health Performance and Delivery Directorate)

Irrelevant & Sensitive

OFFICIAL-SENSITIVE

Irrelevant & Sensitive

SCN(21)16th Conclusions

10

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

Irrelevant & Sensitive

Any Other Business

47. None.

Cabinet Secretariat
October 2021