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Briefing paper by the Director-General, Constitution and External Affairs,
circulated by e-mail at 1:26 p.m. on Monday, 21 December 2020

For discussion at Cabinet on 22 December 2020

From: Thomson KAL (Ken) (Director-General)
Sent: Monday, December 21, 2020 10:26:10 PM
To: First Minister;
 Deputy First Minister and Cabinet Secretary for Education and Skills
Cc: DL Cabinet Secretaries; Cabinet Secretariat inbox;
 Minister for Parliamentary Business and Veterans; Permanent Secretary;
 Executive Team; Munro D (Dominic); Cooper P (Penelope);
 McIntosh A (Alisdair); Covid-19 Director;
 Rogers D (David) (Constitution and Cabinet Director);
 Chief Medical Officer; Leitch J (Jason); McQueen F (Fiona);
 Tannahill C (Carol); Gillespie G (Gary); Chief Financial Officer;
 LPP Chief Statistician;
 MacDougall A (Audrey); Paterson J (John); NR
 Lloyd E (Elizabeth); McAllister C (Colin); Evans L (Lestie)
Subject: RE: Immediate: COVID-19 levels review for 22/12
Auto forwarded by a Rule

PS/FM –

Copied additionally to Cabinet Secretaries and the Cabinet Secretariat, to note the material below and attached {*} for consideration at Cabinet on Tuesday 22 December. In brief, and in light of new evidence of the prevalence of the new strain of the virus in Scotland, the First Minister wishes Cabinet to consider adding a stay-at-home requirement and further restrictions on non-essential retail to the measures being introduced on 26 December.

Thank you for the First Minister's comments. To respond briefly:

- We will confirm with CMO and PHS the terms in which you can refer to evidence on prevalence of the new strain (attached again for reference). The Chief Statistician confirms that there should be no problem with making the relevant figures public tomorrow, provided we plan to follow that up quickly with published data.
- The NERVTAG discussion today confirmed what is already in the public domain as its view on transmissibility (as confirmed in the [Prime Minister's statement](#) on Saturday).
- The drafting team will take account of FM's comments on physical exercise. We have existing travel restrictions and examples of [reasonable excuses](#) from which to work. These include (for example) providing care or assistance to a vulnerable person, and exercise outdoors starting and ending at the same place, in the local government area in which a person lives, or within 5 miles of that local government area.
- The drafting team will provide further advice tomorrow morning on the definition of non-essential retail.

K
 Ken Thomson | Director General, Constitution & External Affairs, Scottish Government

{*} appended below at Annex A

SC(20)50th Meeting – Briefing Paper [APG]
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From: **NR** <[redacted]@gov.scot> On Behalf Of First Minister
 Sent: 21 December 2020 21:47
 To: Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>; First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
 Cc: Cabinet Secretary for Health and Sport <CabSecHS@gov.scot>; Cabinet Secretary for Economy, Fair Work and Culture <CabSecEFWC@gov.scot>; Cabinet Secretary for Finance <CabSecFinance@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Executive Team <DLPSECPET@gov.scot>; Munro D (Dominic) <Dominic.Munro@gov.scot>; Cooper P (Penelope) <Penelope.Cooper@gov.scot>; McIntosh A (Alisdair) <Alisdair.McIntosh@gov.scot>; Covid-19 Director <[redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Chief Medical Officer <CMO@gov.scot>; Leitch J (Jason) <Jason.Leitch@gov.scot>; McQueen F (Fiona) <Fiona.McQueen@gov.scot>; Tannahill C (Carol) <Carol.Tannahill@gov.scot>; Gillespie G (Gary) <Gary.Gillespie@gov.scot>; Chief Financial Officer <cfo@gov.scot>; **LPP** Chief Statistician <ChiefStatistician@gov.scot>; MacDougall A (Audrey) <Audrey.MacDougall@gov.scot>; Paterson J (John) <John.Paterson@gov.scot>; **NR** Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
 Subject: RE: Immediate: COVID-19 levels review for 22/12

Ken,

FM was grateful for this note and had made the following points:

I agree that these additional steps should be considered by cabinet in the morning.
 Some points to consider though before any decision and announcement -

1. If I am to announce tightening of level 4 in statement tomorrow - which I think would be necessary if we are doing it - I will need to set out the reasons. That means, in my view, it will be necessary to share the preliminary PHS 10 - 15% analysis (albeit making clear it is preliminary) - are PHS/CMO content with that? Also, what's the status of the latest NERV TAG analysis? Will it be public or able to be cited?
2. We will also need to be clear about the parameters of stay at home. I'd be keen for us to allow unlimited outdoor exercise. But are we putting any other travel limit on - 5 miles? Or leaving at local authority level? Also, what are the exemptions - I think we still need to allow people to travel/visit for caring etc.
3. I agree about tightening definition of non-essential retail - but we need to know what that entails.

Many thanks,

NR

NR

**Deputy Private Secretary - Diary
 Office of the First Minister**

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From: Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>

Sent: 21 December 2020 20:44

To: First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Cabinet Secretary for Health and Sport <CabSecHS@gov.scot>; Cabinet Secretary for Economy, Fair Work and Culture <CabSecEFWC@gov.scot>; Cabinet Secretary for Finance <CabSecFinance@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Executive Team <DLPSECPET@gov.scot>; Munro D (Dominic) <Dominic.Munro@gov.scot>; Cooper P (Penelope) <Penelope.Cooper@gov.scot>; McIntosh A (Alisdair) <Alisdair.McIntosh@gov.scot>; Covid-19 Director < covid-19.director@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Chief Medical Officer <CMO@gov.scot>; Leitch J (Jason) <Jason.Leitch@gov.scot>; McQueen F (Fiona) <Fiona.McQueen@gov.scot>; Tannahill C (Carol) <Carol.Tannahill@gov.scot>; Gillespie G (Gary) <Gary.Gillespie@gov.scot>; Chief Financial Officer <cfo@gov.scot>; LPP Chief Statistician <ChiefStatistician@gov.scot>; MacDougall A (Audrey) <Audrey.MacDougall@gov.scot>; Paterson J (John) <John.Paterson@gov.scot>; NR Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: Immediate: COVID-19 levels review for 22/12

First Minister

Deputy First Minister

1. In response to the First Minister's comments this morning (included below) and new information on the prevalence of the new strain of the virus this advice asks you to consider, for decision tomorrow, both the measures the First Minister asked us to prepare on a contingency basis: a "stay-at-home" message / requirement, and tighter definitions of non-essential retail, both to apply in L4 areas from Boxing Day.
2. This advice has been prepared rapidly in a fast-moving situation. Though it has benefited from input from several copy recipients including Health policy leads, clinical and other lead advisers and the regulations team, it has not been possible in the time available to clear it with all portfolios. My apologies, therefore, to other Ministerial recipients for the fact that they are seeing this for the first time.
3. If you are minded to consider these options further, I propose below that this advice should be circulated to Cabinet as a whole ahead of tomorrow's meeting.

Assessment of harm 1 risk

4. As you know from CMO's update earlier today, attached for ease of reference, features of the PCR test allow us to use it as a proxy indicator for the prevalence of the new strain, adding considerably to our understanding of its prevalence. By that means, we estimate that between 10 and 15% of new cases in Scotland are now the new strain, compared to under 2% a month ago.
5. NERVTAG also heard analysis today confirming the new strain as increasing Rt by 0.4, with a doubling time of 6.3 days. This appears consistent with the estimate of 60-70% greater transmissibility, and the London testing data showing cases per 100k more than doubling in a week.

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6. Taken together, these suggest that the new strain is already established in Scotland to a much greater degree than was known on Saturday; is likely to become a greater proportion of all cases, since it will come to dominate other strains; will further drive up overall R_t as it does; and will thus lead to exponential growth in new cases if suppression measures are not strong enough to overcome this effect.
7. At the height of the March lockdown, R in Scotland fell to about 0.6. L4 is not as powerful as the March lockdown. L4 appears to have been strong enough to suppress cases at a point when the new strain formed only a small proportion of all cases. The recent rise in cases coincided with the increasing prevalence of the new strain. This may explain why L3 has not been able to maintain suppression recently to the same extent it did previously. By the time the new strain forms the majority of cases, L4 as currently defined may well also not be enough to suppress the virus.
8. Further modelling is under way now which will allow us to advise in coming days on the likely effects of L4 with schools and universities closed, and then resuming. That analysis is likely to suggest not only that stringent measures will be required for longer than three weeks, but that L4 on its own, with schools and universities open, would result in infections and hospital use peaking above the first wave.

Additional L4 measures

9. Against that background, accepting that this is preliminary analysis, and noting that decisions on schools, universities and the duration of stringent measures lie ahead of us, there appears to be clear justification for acting now on the precautionary principle to strengthen the measures to be brought in on 26 December.
10. Rapid consideration today confirmed stay-at-home and non-essential retail as the two best candidates for rapid implementation, in particular given the sales season about to start. Contingent drafting is well advanced to:
 - a. reintroduce a “stay-at-home” requirement in L4 areas, with defined reasons for leaving home;
 - b. reduce outdoor meetings in L4 to 2 people from 2 households, with children not counting: that is, an adult could meet one adult from another household; and
 - c. use a combination of the “stay-at-home” requirement and adjustments to the definitions of essential retail to significantly further limit non-essential retail activity immediately after Christmas in L4 areas.

Consideration

11. These measures would increase the harm 1 effectiveness of the Boxing Day measures. They would not have a significant further impact on harm 2, beyond that of Level 4. They would increase social isolation and perhaps anxiety, increasing harm

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3. They would close more businesses, increasing harm 4, and they would add somewhat to the financial cost to the Scottish Government of business compensation.
12. Officials have modelled the cost of Strategic Framework Business Fund (SFBF) support for the period to 25 January 2021 (payments are made 4-weekly in arrears) as £88-95 million *without* the additions described above. This is based on full uptake for most sectors, so likely costs will be lower. These costs are demand-led, and up to £220 million has been earmarked for these costs to the end of the financial year. The total earmarked for business support (October to March) is £570 million.
13. Despite these additional impacts on harms 3 and 4 and the increased cost to SG, the priority given to suppressing the virus, combined with what we currently know about the new strain, would justify these measures, consistent with the *Strategic Framework*, the “four harms” approach, and the information we now have on the transmissibility of the new strain of the virus.
14. There are of course decisions of detail, some of particular sensitivity, sitting behind these measures: which additional retailers would be shut, and what effect will this have on policy relating to places of worship or weddings or funerals policy. While we consider that these measures are proportionate, necessary and justified, protecting them from the risk of legal challenge will mean the preparation of rigorous business regulatory and equalities impact assessment and analysis. There is also likely to be a demand for parliamentary scrutiny given the significance of the measures, that may require additional parliamentary time to be found this week.

Decision-making

15. If you were minded to pursue the changes set out above, they could be:
- a. considered at Cabinet tomorrow morning, 22 December, and this advice could be circulated to inform that discussion;
 - b. announced to Parliament in your statement tomorrow afternoon, asking people to stay at home as much as possible immediately, and making clear a “stay-at-home” requirement will become law on Boxing Day, with the other restrictions;
 - c. set out in regulations made on Wednesday 23 December; and
 - d. come into effect along with the designation of areas as L4 on Saturday 26 December.

Timing of move to L4

16. In the course of today we have briefly considered whether the L4 restrictions could be brought forward from Boxing Day. While that might be technically feasible, I do

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not advise it. Unless Christmas gatherings were completely prohibited, there would be no real harm 1 gain in relation to Christmas Day; and the earliest the change could be given practical effect is likely to be Christmas Eve. There would be significant disruption, and quite possibly significant non-compliance and loss of public confidence, if hospitality and non-essential retail were closed on the last shopping day before Christmas at about 36 hours' notice, especially given current concerns about essential supplies; and that would also apply if Christmas gatherings were similarly cancelled at this late stage, coming on the heels of Saturday's announcement.

Conclusion

17. I invite you to indicate whether you wish to consider these options at Cabinet tomorrow, and to hold open the possibility of announcing them to Parliament.

K

Ken Thomson | Director General, Constitution & External Affairs, Scottish Government

From: **NR** <[redacted]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary

Sent: 21 December 2020 08:58

To: First Minister <firstminister@gov.scot>; Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Cooper P (Penelope) <Penelope.Cooper@gov.scot>; Munro D (Dominic) <Dominic.Munro@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McIntosh A (Alisdair) <Alisdair.McIntosh@gov.scot>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>

NR **NR**

Subject: RE: COVID-19 levels review for 22/12

Ken

DFM agrees with FM's comments below.

Kind Regards

NR

NR Deputy Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government

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From: [REDACTED] **NR** [REDACTED]@gov.scot> On Behalf Of First Minister
Sent: 21 December 2020 08:14
To: Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>; First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Cooper P (Penelope) <Penelope.Cooper@gov.scot>; Munro D (Dominic) <Dominic.Munro@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McIntosh A (Alisdair) <Alisdair.McIntosh@gov.scot>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot> [REDACTED] **NR**
Subject: RE: COVID-19 levels review for 22/12

Ken,

FM has considered overnight and thinks we need to consider if, assuming this new strain is as infectious as indicated, current level 4 is going to be tough enough to suppress it sufficiently. FM is thinking particularly whether we need to (a) tighten the definition of non-essential retail and (b) consider necessity of a stronger stay at home restriction. FM does not believe we need to rush to do this immediately, or even ahead of Boxing Day, but thinks we need to consider quite rapidly in light of emerging evidence.

Many thanks,

[REDACTED] **NR**

Deputy Private Secretary - Diary
Office of the First Minister

From: Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>
Sent: 20 December 2020 15:17
To: First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Cooper P (Penelope) <Penelope.Cooper@gov.scot>; Munro D (Dominic) <Dominic.Munro@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McIntosh A (Alisdair) <Alisdair.McIntosh@gov.scot>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot> [REDACTED] **NR**
Subject: RE: COVID-19 levels review for 22/12

PS/First Minister, PS/DFM –

1. I emailed on Friday evening (below) proposing an approach to the levels review for 22 December. That has been overtaken, obviously, by yesterday's events and announcements. This note sets out how we now propose to use the next couple of weeks for cross-government COVID decision-taking. It is for information, unless FM or DFM wishes to give us a different steer.

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OFFICIAL-SENSITIVE**Week beginning 21 December**

2. There is no need for a levels review in the coming week, since the necessary decisions were taken on Saturday; and the priorities now are (i) work to implement yesterday's decisions and (ii) work on the review of the *Strategic Framework*.
3. On (i), the immediate priority is the necessary changes to regulations. Those were instructed before yesterday's media briefing; drafted last night; signed by Mr Matheson this morning; and have been published (under 20 hours from Cabinet conclusions to made law may be a new record). Changes to guidance and marketing materials are also in hand.
4. We are commissioning portfolio officials to provide short, action-oriented updates in the course of Monday, particularly from Economy and Transport / Justice, and will gather that material to support a statement by the First Minister on Tuesday setting out the reasons for yesterday's decisions, and the action taken since.
5. I do not propose to offer the DFM a levels review paper for Tuesday's Cabinet, and the standing item on COVID-19 will provide an opportunity for any necessary discussion.
6. On (ii), I propose to convene the Four Harms (ii) group tomorrow afternoon, as planned, but to use the discussion to inform the review of the *Strategic Framework*.

Week beginning 28 December

7. Similarly, since the intention is to apply higher levels for three weeks, I propose that there should not be a levels review between Christmas and New Year. I have in mind, also, that many Ministers and officials by then will be focused on EU exit issues, whether or not there is a deal.

January

8. We are arranging a Cabinet meeting for 5 January as a contingency, for both COVID and EU exit matters, and can stand it down if the First Minister so decides nearer the time. As you are aware, we expect disruption to supply chains and other matters to emerge as economic activity restarts after the holiday weekend, rather than necessarily immediately on 1 January.
9. I do not propose that we bring a levels review to Cabinet on 5 January. To do so might raise expectations of an early end to the L4/L3 measures, which feels (at this stage) premature.
10. The First Minister said yesterday that the L4/L3 decisions would be reviewed after two weeks; that is, after Saturday 9 January. I therefore propose that we do a levels review for Cabinet on Tuesday 12 January. We also intend to bring to Cabinet that day the conclusions of the review of the *Strategic Framework*.

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Framework in terms of the design of levels and the indicators and ranges to apply. That will mean that, if Cabinet concludes that lower levels can be applied from mid-January, the exit from L4/L3 will be to new levels. Cabinet might, of course, conclude that higher levels should remain in place longer.

11. Some other aspects of the review – for example, scenarios in relation to vaccination and mass testing – will come back to Cabinet in later weeks; and we are working with Health colleagues on ways of drawing on scenario analysis of the kind raised in the session with Jeremy Farrar.

Data and analysis

12. Ministers will continue to receive analytic reports on the schedule already agreed. We should bear in mind that the holiday period will affect both the number and timing of people coming forward for testing, and the differences between specimen and reporting dates. This may mean that data in the week beginning 4 January will be harder than usual to interpret; a further reason to be cautious about basing levels reviews on that week's figures.

Conclusion

13. I invite the First Minister and DFM to note that we are proceeding as set out above; and comment if they wish.

K

Ken Thomson | Director General, Constitution & External Affairs, Scottish Government |

From: Thomson KAL (Ken) (Director-General)

Sent: 18 December 2020 20:21

To: First Minister <firstminister@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; Munro D (Dominic) <Dominic.Munro@gov.scot>; Cooper P (Penelope) <Penelope.Cooper@gov.scot>; McIntosh A (Alisdair) <Alisdair.Mcintosh@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>

Subject: *Relevant to tonight's Four Nations call* - COVID-19 levels review for 22/12

Importance: High

First Minister –

1. This note sets out the approach we are developing for next week's additional levels review. While it was not written with this in mind, it **may be useful background to the Four Nations call now being arranged for later tonight**. Otherwise, it doesn't require a response, except in relation to options for further discussion and engaging Cabinet; but of course we'd welcome any steers.

Context

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2. Northern Ireland and Wales have announced post-Christmas “lockdowns”. England has moved to higher tiers. The Prime Minister says he is “hoping to avoid” another national lockdown; but after most of this note was written, we heard that the UK Cabinet is meeting now, and a Four Nations call is being convened later this evening. The other nations’ measures come in response to 7-day case rates/100k ranging from 50% higher than Scotland’s (in Northern Ireland) to twice and five times as high (England and Wales, respectively). The Dublin government is considering stricter measures before the end of the year, as are several other European governments.
3. Scotland is not a closed system, in terms of epidemiology, politics and public expectations and attitudes. The Christmas easings are bound to result in some transmission, even though a majority of people intend to take no advantage of them. Politically and presentationally, the measures announced elsewhere condition public expectations and acceptance of what might happen next in Scotland.
4. In Scotland, the current picture is mixed. The following points are drawn from the titles of slides in the latest “State of the Epidemic” report, sent to your office at 14:28 today.
 - a. New cases in Scotland remain lower than other parts of the UK.
 - b. The number of confirmed cases increased slightly this week, in all age groups.
 - c. Most cases are in central Scotland.
 - d. The latest published R is between 0.9 and 1.1.
 - e. There is no uniform trend in case growth across LA levels or urban/rural areas.
 - f. The level of mixing is now the lowest since the survey began in August, with a small fall in the last week.
 - g. The published indicators of forecast hospital and ICU demand are low across the whole of Scotland (but see below).
 - h. Hospital and ICU bed use is expected to be relatively stable over the next two weeks, and hospital admissions are still trending down.
 - i. Over a third of the population plan to take advantage of the festive relaxation of rules; half do not; 14% don’t know.
5. Recent days’ data have been harder to interpret, as they seemed to turn upwards, and have since been less than we might have expected if that increase was accelerating exponentially. Possible explanations range from a new strain of the virus through pre-travel student testing to the impact of place-based mass testing to changes in the way care home test results come into the figures.
6. We should remain concerned, and not expect the data to offer certainty in the next two weeks. The effect of the Christmas easings is uncertain, including because the schools being closed will to some extent offset any effect of the easings on social gathering. The holiday will itself affect how people with symptoms will come forward for testing, and how many symptomatic tests are conducted. Looking further out, and remembering Jeremy Farrar’s comments, it is still too early to expect vaccination

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effects; but they may come sooner rather than later in care homes, which currently account for around 30% of confirmed deaths by location.

Strategic options

7. The context has led us to consider offering Ministers a different approach to next week's review. In short, it would offer three strategic options.
 - a. An **"emergency stop"**, through pre-emptive L4 national braking. This was proposed by the NIMT last week, and rejected by Cabinet on the grounds that it would have been disproportionate and premature.
 - b. **"Hard braking"**, by applying L4 in the central belt, while leaving other areas at L1, and using this to target a sharp reduction, sufficient to allow release to L2/L1 rather than a longer period in L3/L2 measures. The CMO is keen to secure Ms Freeman's backing for an approach of this sort, and to test it with the NIMT on Monday. From a **"four harms"** perspective, hard braking, if applied for a short period, might be preferable to a longer period of lower levels; but it would obviously have a harder impact on harms 2-4.
 - c. **"progressive braking"**, by continuing to apply the levels necessary to suppress the virus in each local authority area, as you have done through recent weeks, with decisions guided but not determined by the published indicators and ranges.
8. A Cabinet paper could set out a – necessarily rapid – consideration of these three approaches, as well as (as usual) recommendations for levels within the third approach.
9. Cabinet might again rule out the **"emergency stop"** as disproportionate. It might however be worth testing that conclusion in the new context, given that the NIMT may return to the recommendation, roughly equivalent options has been taken by other governments, here and abroad, and an argument can be made for **"national solidarity"** in periods of the most intense measures.
10. Among the issues a paper would need to explore in relation to **"hard braking"** are:
 - a. **the "four harms" impacts**, including the financial consequences for SG of increased compensation to businesses;
 - b. the extent to which decisions are driven by **hospital and ICU capacity** concerns (see below);
 - c. the need for a continued focus on communications and **compliance** with restrictions, for example in relation to house parties, household mixing and travel (on which Mr Matheson received advice last night, copied to your office);

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- d. the treatment of **schools and universities**: the DFM affirmed to me earlier today his determination to keep schools open, notwithstanding the UKG's move, and practicality stands in the way of announcing any late changes; that said, if the aim were to be the hardest of hard braking, we would have to consider (and we can model) the R effect of keeping schools and universities open or moving to blended learning.
11. As noted above, **hospital and ICU capacity forecasts** – indicators d and e of the current set – are currently green (low) across Scotland. I am aware that Health colleagues are putting advice to Ms Freeman that would have the effect of reducing the headroom on these; and that as part of the review of the Strategic Framework, they want to propose a different approach to these forecasts.
12. While it will certainly be possible to take account of hospital capacity in next week's decisions – and given experience in Northern Ireland, it will be essential to do so – we will need to test how much Ministers could rely on reductions in capacity rather than increases in demand to justify "hard braking." In so saying, I should be clear that I am not pre-empting or questioning Health colleagues' advice on this; simply flagging it as something requiring to be set out in a Cabinet paper, where to date levels reviews have focused much more on case numbers and test positivity.
13. We will prepare material for "**progressive braking**" options over the weekend and Monday in light of the emerging latest data and in response to the NIMT's advice. A template approach to securing that advice is being developed, responding to points you made to CMO and me last week.

Decision-making process and timings

14. This additional review falls in the week Parliament goes into recess. We think it will be possible to follow the usual process for NIMT, Four Harms and Cabinet meetings on Monday and Tuesday; and then to make the regulations earlier than usual, to allow earlier consideration by the COVID-19 Committee, before recess.
15. Ordinarily, decisions announced on a Tuesday come into force the following Friday. Next week, Friday is Christmas Day. We propose that any changes decided on Tuesday should come into force immediately following the Christmas easings: that is, at the end of Sunday 27 December.
16. If you were to proceed with "hard braking", our advice is likely to be:
- a. to put such measures in place for **an initial period of three weeks**, to Sunday 17 January, while indicating they may stay in place for longer (likely to be clinicians' preference) – an alternative would be to indicate an intention to review after a fortnight;
 - b. to **use the current design of L4**, as part of keeping changes to what we can do with the existing regulations "toolkit", reflecting the compressed period for drafting regulations or changing the design of levels;

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- c. to **brief the party leaders and (separately) the Presiding Officer** on what is proposed: as you will recall, we have an agreement with Parliament that significant changes of approach should be discussed in plenary. That might require the recall of Parliament; and Parliament might in any case be recalled for EU exit business;
- d. to **use the three-week period for work on the review of the *Strategic Framework***, adapting the timings set out in Dominic Munro’s advice of Thursday at 17:29. That would also allow us to do some scenario planning to follow up the session with Jeremy Farrar, and to develop specific interventions such as vaccination for teachers.

17. Whether or not “hard braking” was applied, **we are likely to advise *against* a further decision-point in the week between Christmas and New Year**. If Ministers had decided on at least three weeks of “hard braking”, it would not be necessary; and even if not, we doubt that the data available that week will be useful, including because people may well not come forward for testing over Christmas. If Ministers went for “progressive braking”, we would propose a precautionary approach, and for levels decided next week to stay in place for at least a fortnight.

Engaging Cabinet and others

18. You may wish us to **brief Cabinet** LPP **on the approach to this review**, or to engage colleagues yourself, particularly if you want us to set out the “hard braking” option. Options for this include some or all of:
- a. a further “scene-setting” note like this one, based on your feedback and copied to Cabinet and the Executive Team;
 - b. a discussion with a small number of Ministers and officials over the weekend, if that would be helpful;
 - c. a “Gold” meeting on Monday, involving key Cabinet Secretaries; and
 - d. calls with local authorities, with a list drawn up over the weekend in light of the data and any steers from you and DFM on the approach set out here.

Conclusion

19. I invite you to:
- a. note the **context** (paragraphs 2-6);
 - b. note and comment on the **strategic options** (paragraphs 7-13);
 - c. note and comment on the approach to **decision-making and timings** (paragraphs 14-17); and
 - d. indicate which if any of the options for **engaging Cabinet and others** you would want us to pursue (paragraph 18).

K

Ken Thomson | Director General, Constitution & External Affairs, Scottish Government |

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ANNEX A

From: Smith G (Gregor) <Gregor.Smith@gov.scot>

Sent: 21 December 2020 17:57

To: First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Cabinet Secretary for Health and Sport <CabSecHS@gov.scot>

Cc: First Minister Covid Briefing Unit <FMcovidbriefingunit@gov.scot>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; Hutchison D (David) <David.Hutchison@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; DG Health & Social Care <DGHSC@gov.scot>; Leitch J (Jason) <Jason.Leitch@gov.scot>; Connaghan J (John) (Health) <John.Connaghan2@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>; Munro D (Dominic) <Dominic.Munro@gov.scot>; McQueen F (Fiona) <Fiona.McQueen@gov.scot>; Chief Medical Officer <CMO@gov.scot>; Covid-19 Director < covid-19.director@gov.scot>; Kellet M (Michael) <Michael.Kellet@gov.scot>

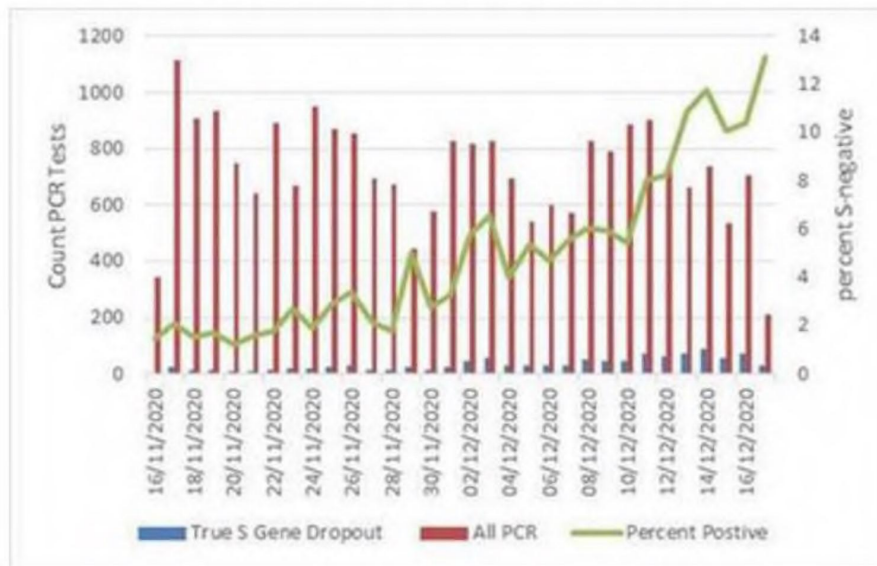
Subject: Nascent estimate of new variant spread

First Minister

A quick update on work to try to determine the extent of spread in Scotland of the new variant coronavirus. This information comes with wide confidence intervals and should be viewed as an indicative scenario – further work is underway to narrow the degree of certainty associated with this data. I would advise caution in public use of data at this stage.

The new variant is associated with a particular sequence of result on Thermo-Fisher PCR platform, referred to as the S-Genes Dropout. It is not the only explanation for this, as other mutations and certain technical anomalies may also cause this. Urgent genomic analysis of 48 further samples associated with the S-Genes Dropout in Scotland will take place to attempt to validate this as a proxy marker for the new variant. I expect preliminary analysis of this work to be available on Wednesday afternoon.

Based on these assumptions, PHS have undertaken further analysis of S-Genes dropouts in Scotland since mid-Nov. a chart of this analysis is shown below:



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This analysis suggests that the relative proportion of cases likely to be the new variant has gradually climbed to between 10-15% since first identified in mid-Nov. this compares to estimates for London and the South East of 40-60% of current cases.

Using the latest “state of the epidemic” estimates, this would equate to:

- 10% proportion; 270-790 cases per day (total estimated cases, not confirmed positive cases)
- 15% proportion 405-1085 cases per day (total estimated cases, not confirmed positive cases).

Of signals from around Scotland, these appear to be strongest from Glasgow, Lanarkshire, Lothian and Grampian.

Further urgent work will continue to develop greater certainty in these estimations but this may help to guide the likely emerging scenario of spread in Scotland at this time. I also expect further information on transmissibility to flow from the meeting of NERVTAG / SPI-M this afternoon and will update you on this when available.

G

Dr Gregor Smith
Interim Chief Medical Officer for Scotland
Scottish Government

[ends]