

SCOTTISH CABINET

COVID-19: REVIEW AND RESPONSE

PAPER BY THE DEPUTY FIRST MINISTER AND CABINET SECRETARY
FOR COVID RECOVERY

Purpose

1. This paper invites Cabinet to **note** updates set out in this paper and its Annexes. Together these describe the context within which the decisions outlined below will be taken.
2. This paper then invites Cabinet to **consider**:
 - ◆ the continuing development of the Covid-19 epidemic, in particular in relation to the Omicron variant;
 - ◆ the potential need for further protective measures, building on those announced and introduced last week;
 - ◆ the scope for such action in the context of the position currently taken by the UK Government.
3. Subject to that consideration, this paper invites Cabinet:
 - ◆ to **agree** that the existing protective measures should be extended for up to a further 3 weeks;
 - ◆ to **agree** that the Health Protection (Local Authority Directions) Regulations should be extended for up to a further 6 weeks;
 - ◆ to **agree** that the measures set out at paragraph 21 (as 'Option B') are now put into effect, on the timescale set out at paragraph 37;
 - ◆ to **agree** the proposed parliamentary procedure;
 - ◆ to **agree** to the adjustments to contact tracing and self-isolation arrangements set out at paragraph 44;
 - ◆ to **agree** to continue to delegate to the First Minister decisions that are broadly consistent with the strategic approach as already approved by Cabinet, with support from colleagues and advisers;
 - ◆ to **agree** to hold dates for Cabinet on 29 December and 5 January;
 - ◆ to **note** the likelihood of demands for a recall of Parliament during recess;

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- ◆ to **agree** to delegate to the First Minister the finalisation of the terms of her statement to Parliament on Tuesday 21 December.

Timing

4. This paper will be considered by Cabinet on **Tuesday 21 December**.

Updates

5. A number of key updates are attached, as follows:
 - ◆ Annex A: Current state of the epidemic;
 - ◆ Annex B: NIMT advice, 16 December 2021;
 - ◆ Annex C: Health and Social Care pressures;
 - ◆ Annex D: Social harms and challenges;
 - ◆ Annex E: Economic conditions and challenges;
 - ◆ Annex F: Modelling the epidemic;
 - ◆ Annex G: The position of the UK Government, and resultant financial considerations;
 - ◆ Annex H: Vaccinations – progress and JCVI advice.
6. Cabinet is invited to note these updates.

State of the epidemic

7. As **Annexes A to F** make clear, Omicron case numbers continue to rise sharply; and modelling suggests that they will continue to do so, followed in time by substantial increases in admissions to hospital and ICU, and in deaths. How big these increases are depends on the severity of Omicron, which we do not yet know; but, given the anticipated much larger numbers of cases, Omicron would need to be *much* less severe to avoid significant impacts on the health service, and significant numbers of deaths.

8. We must therefore consider again whether or not to take action now (or as soon as possible) to reduce the risk of the most serious of these scenarios unfolding, in the event that Omicron is not much less severe than Delta. In doing so, we should also take account of the potential impact of a high number of cases on the wider provision of essential services – even if Omicron is much less severe.

9. As last week, my assessment is that in the continuing absence of firm evidence that Omicron is much less severe, we have little choice but to do all we can to prevent (or at least minimise) the potential rise in cases, and related harms.

10. In doing so, of course, we remain constrained by our limited financial resources, and by the position maintained to date by the UK Government (as described in **Annex G**). The Treasury has now provided notice of an additional £220m to support COVID costs.

11. The Cabinet Secretary for Finance & Economy proposes allocating £45m of this to Health, restoring the shortfall created by the Treasury's 14 December announcement. Of the remaining £175m, she proposes allocating £16m to Transport recognising the impact of current guidance on farebox income; and £159m to support business, including any further requirements for culture, tourism and major events.

Response measures

12. Against this background, I now invite Cabinet to consider three groups of measures for the next stage of our response to the Omicron variant. These are:

- ◆ **Option A:** maintaining and strengthening our existing response without at this stage proposing changes to regulations, and reviewing on Wednesday 29 December;
- ◆ **Option B:** as option A, but adding stronger advice along with changes in regulations to pause large-scale events and strengthen protections in hospitality settings for three weeks from Monday 27 December to Sunday 16 January inclusive, reviewing on Wednesday 5 January and Tuesday 11 January;
- ◆ **Option C:** committing to a time-limited “circuit-breaker” of stringent measures from 27 December for four weeks, reviewing on Wednesday 5 January, Tuesday 11 January, and thereafter weekly; but Cabinet should note that, for reasons set out below, Option C is not available to us at this stage.

13. These options are described and assessed in **Annex I**, and in summary below.

14. Any of these options would include the retention of the current statutory measures (including those newly implemented), in light of developments in the epidemic. The continuing justification for each of these measures, within the updated context of the Omicron epidemic, is set out at **Annex J**. These measures would continue to be kept under review by Cabinet, with a further review no later than three weeks' time – that is, on or before 11 January 2022.

15. It is also appropriate at this time to review the Health Protection (Directions by Local Authorities) Regulations. The justification for these measures is set out at **Annex K**. These Regulations provide for local authorities to make Directions relating to specified premises, events and public outdoor places, are still required so that effective tools to respond to outbreaks remain available. The Regulations are subject to further review no later than six weeks' time – that is, on or before 1 February 2022.

16. **Option A** maintains the advice to stay at home as much as possible, keep contacts to a minimum in the run-up to Christmas Day (or other significant seasonal gatherings), and to keep gatherings as small as family circumstance allow, and as safe as possible, through testing, good hygiene and ventilation.

17. Option A also includes requiring employers and others to take reasonable steps to reduce transmission including for example by supporting working from home as much as possible and collecting customer contact details in hospitality settings.

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Existing requirements for wearing face-coverings in most indoor public spaces and COVID certification for large events and for nightclubs and other similar venues.

18. There is evidence in opinion surveys to confirm that the public as a whole are receptive to current advice, trust those giving it, and are acting on it. Support for the handling of the pandemic in Scotland, trust in Scottish Government to lift/re-impose restrictions and clarity on requirements when it comes to restrictions have all seen an increase in strong agreement, and plans for Christmas have shifted away from eating/drinking out. That being the case, it would appear disproportionate to reintroduce mandatory limits on in-home socialising. Individual and societal wellbeing (harm 3) will be mitigated by continuing with this advice if people feel reassured that “Christmas is not cancelled”.

19. Option A, however, continues advice that we know is having adverse financial and economic effects in a range of sectors, notably hospitality and events, including cultural events. Through difficult choices, we were able to make available £100m of additional financial support last week to mitigate these effects. Some further resource is now available, as set out above, and could be used in Option A for further mitigation.

20. Option A will have some benefit in terms of harms 1 and 2. It appears likely, however, that this will not be sufficient to prevent a further sharp rise in cases in the near future, as Omicron comes to represent a still greater proportion of cases in Scotland.

21. **Option B** therefore develops Option A by introducing stronger advice and some changes to regulations for settings where the highest degree of social mixing takes place. These would come into effect on 27 December, after Boxing Day, with associated further financial support. Specifically, and in addition to Option A, Option B would:

- ◆ reiterate existing advice for the period to Boxing Day;
- ◆ thereafter and for three weeks, the advice would be to stay at home as much as possible, keep contacts to a minimum; and keep New Year gatherings as small as your family circumstances allow;
- ◆ do more to press retailers and others to take reasonable steps to reduce transmission, as required by changes to regulations decided by Cabinet at its meeting on 14 December;
- ◆ regulate to pause large-scale events for three weeks;
- ◆ regulate to reintroduce physical distancing and table service in indoor hospitality settings for three weeks;
- ◆ issue guidance to pause non-professional indoor contact sports for adults for three weeks;
- ◆ indicate at this point that when the booster programme is effectively complete, Ministers will consider extending COVID certification to a wider range of indoor public settings.

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22. The first three elements of this package reiterate and develop existing measures.

23. Pausing large-scale events would be achieved by limiting attendance to 100 indoors standing, 200 indoors seated, 500 outdoors standing, and 1,000 outdoors seated, with 1m physical distancing. These limits recognise the different risks involved and clinical advice; but there is room for judgement here, and Cabinet may wish to consider whether these limits are the right ones. The introduction of limits also takes account of contacts and potential crowding on public transport, at entrances, in concourses, and through associated additional pressure on hospitality settings, and expected pressures on emergency services arising from sickness absence during an Omicron wave. There would be no change to the COVID certification scheme, but these reduced limits would be below the thresholds. In relation to professional football, the expectation is that games would go ahead with a small number (1,000) in attendance to watch. These limits would also impact on rugby and horse-racing fixtures in January.

24. Cabinet will wish to note that the proposal to apply attendance limits would mean that none of the components of Edinburgh's Hogmanay ('Greyfriars Concerts', Torchlight Procession, Party at the Bells (street party and concert in the gardens) and the Loony Dook (and probably other celebrations around Scotland) would be able to proceed. This is likely to lead to calls for financial support.

25. The case for changes in relation to hospitality is finely balanced. The requirement in regulations would reintroduce distancing between groups, and table service. Guidance would continue to be that groups should not represent more than three households, but it should be recognised that compliance might be low on that point, and enforcement is unlikely to be practicable. Distancing between groups would be at 1m, for reasons set out in more detail at **Annex I**. This limits (but does not entirely remove) the reduction in transmission. Clinical advice is for 2m but this would significantly exacerbate harm 4 effects, since it would render many more businesses unviable.

26. Because of the number of premises involved, even a substantial amount of financial assistance means only small amounts for each business. The proposals set out in Annex I are based on the support available to the sector previously for 12 weeks at Level 3, which would amount to £66m. This, in effect, would double our payment from last week's £100m package to hospitality. This equates to grants of £4200 or £6300 per premise. Cabinet might consider it better to target resources to measures where economic harm can be more fully mitigated; and that, given signs of marked changes in people's behaviour in response to advice to cut contacts and stay at home as much as possible, much of the effect sought by this change will be achieved if more people stay at home, reducing crowding for those who do go out.

27. The proposal in relation to adult indoor contact sport follows the logic of applying physical distancing indoors. This was done through guidance rather than regulations previously, so that is the more proportionate approach.

28. Cabinet is familiar with the option of extending COVID certification, considered twice at recent meetings, and now implemented elsewhere. This option need not be

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announced at the same time as others, but doing so would give more time for sectors to prepare, and would indicate the intended route beyond the short term. In the longer term, extending certification (like ventilation) is an important step towards adapting the hospitality sector, and society as a whole, to become more health-resilient, and better able to manage future surges in infection, whether seasonal (like flu) or as a result of further new variants.

29. Taken together, these measures should exert some further downward pressure on transmission, potentially mitigating some harm 1 and 2 impacts by gaining further time in which to complete boosters and assess the severity of the Omicron variant. Recognising the uncertainty that remains on the latter point in particular, these measures should be kept under frequent review, as proposed above.

30. While there will be harm 3 effects, these would be less than would result from applying statutory limits on household mixing. In order to avoid disproportionate harm 3 effects, Option B does not impact on educational settings, workplaces, retail settings public buildings and places of worship, where existing guidance and regulations would continue to apply.

31. Recognising the harm 4 impacts on businesses in the events and hospitality sector in particular, the additional financial support now identified would be applied to mitigate these somewhat. Further information on potential costs and financial support provided under similar restrictions at earlier stages is provided at **Annex I**. If Cabinet decided to proceed with Option B, I propose that the First Minister should set out a total figure for further support, and that the Cabinet Secretary or Finance & Economy recommend allocations informed by engagement with portfolios Cabinet Secretaries and sectors. Implementation will necessarily be swift. Cabinet should note that local authorities will be operating with significantly reduced capacity in terms of officers available to make payments and to undertake enforcement / compliance activities in the next fortnight.

32. Option B would be particularly challenging for nightclubs, given that they cannot operate as such with physical distancing, and the lack of access to furlough. It would be open to nightclubs to operate as pubs, without dancing, but this is unlikely to be viable. I have considered alternatives such as exempting nightclubs from physical distancing requirements, or requiring evidence of both vaccines and a negative test for entry to nightclubs or a negative test only. Exemption from physical distancing would significantly weaken the protection from transmission in nightclubs, a high-risk setting. Changes to the certification requirements risk raising issues of equalities (by in effect mandating vaccination for those wishing to use nightclubs) or practicality and the prioritisation of tests, likely to be in very high demand.

33. Option C would have the strongest effect on transmission, for as long as the measures were in place. Current modelling – subject to considerable uncertainty, given the amount we still have to learn about Omicron – suggests that measures equivalent to former Level 4 applied on 27 December would significantly reduce levels of Omicron infections, hospitalisations, ICU occupancy, and deaths. Care would need to be taken when lifting the lockdown to avoid a very sharp peak.

34. A period of braking would allow time to complete the booster vaccination programme, assess the severity of Omicron, and prepare measures to manage the “release wave” – for example extensions of the COVID certification programme, including the ability to evidence booster / third jabs and negative LFTs. The period of braking would also have the effect of moving peak COVID demand for hospital services later than the expected peak of other winter pressures.

35. Option C is supported by clinical advisers and would have the strongest benefits in terms of harms 1 and 2, at least for as long as it was in place and providing the exit wave could be managed. It would, however, impose considerable social and severe economic harm. This would be even greater were it to be introduced earlier. These harms, and Option C as a whole, would be disproportionate without financial and economic support similar to that provided in earlier periods of similar measures. It appears that the UK Government does not intend to use a similar “circuit-breaker” in England, and is not prepared at this stage to provide access for devolved administrations to mechanisms such as furlough or borrowing, nor to financial resources of the kind that would be required for Option C. Option C is therefore unavailable to Scottish Ministers at this point in the epidemic.

36. That is not to say that Cabinet would have adopted it, had it been available; but the fact that it is not available underlines a significant constraint on Scottish Ministers’ response to the pandemic. The First Minister and her counterparts in Wales and Northern Ireland have made clear to the UK government, in writing and in COBR meetings, that the present arrangements for financial and economic are not fit for the purpose of supporting devolved administrations in taking the actions they judge necessary to discharge their responsibilities in relation to public health.

Consideration

37. Taking all these factors into account, I consider that the measures contained in ‘Option B’, as listed in paragraph 19, represent an appropriate and proportionate response to the situation we face.

38. Cabinet is therefore invited to agree that the measures set out at paragraph 21 above (as ‘Option B’) are now put into effect, on the timescale set out at paragraph 40.

Legal considerations

39. An assessment of the key legal issues raised in this paper, [Redacted] , is set out at **Annex L**.

Parliamentary handling, and use of ‘Made Affirmative’ procedure

40. I recommend that these measures should be in place as soon as possible. In terms of measures requiring regulations, it is possible to use the ‘Made Affirmative’ procedure if Scottish Ministers consider regulations require to be made urgently. I suggest that the earliest possible date on which these regulations should come into force is Monday 27th December.

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41. Following the procedure previously agreed with Parliament for these made affirmative instruments, the regulations would proceed as follows:

- ◆ Tues 21st: First Minister makes statement to Parliament;
- ◆ Wed 22nd: draft regulations shared with the Parliament by 4 p.m.;
- ◆ Thurs 23rd: regulations made and laid in the Parliament. The making of the regulations would be announced to Parliament by GIQ, and a letter sent to the Presiding Officer;
- ◆ Thurs 23rd: Covid-19 Recovery Committee (am) – Deputy First Minister attending;
- ◆ Mon 27th: regulations come into force.

42. Some of these measures will affect businesses such as bars and nightclubs which could be operating at midnight on 26/27 December. In my view these new requirements should not require businesses to put in place new systems during the course of an evening. I consider that it would be preferable for these measures to take effect when these businesses will have essentially ceased operating for the evening of 26/27 December and before other businesses affected have opened up for business on the 27th. I would therefore propose that the regulations should come into force at 05:00 on Monday 27th December.

43. While we may wish to signal that these measures would be in place for 3 weeks, I would suggest that these regulations should not include an automatic expiry date but, given the uncertainties around Omicron, the regulations should instead be subject to the usual 3 week review cycle.

44. I invite Cabinet to confirm that:

- ◆ they consider regulations to be required urgently;
- ◆ they are content with the above timings and that the regulations should come into force on Monday 27th December at 05:00; and
- ◆ they agree that the regulations should not include an expiry date.

Contact tracing and isolation

45. Modelling suggests that it may be only a matter of days until demand for COVID-19 PCR tests exceeds capacity, and where contact tracing resources will no longer be able to deal with the current approach to telephone triage calls. Modelling also suggests that this may last for a number of weeks. This will require the approach to testing and contact tracing to be adjusted, in line with our joint objectives of protecting the vulnerable and reducing transmission. This would include the following:

- ◆ prioritisation of PCR testing availability for essential workers and the highest risk;
- ◆ maximising the use of daily contact testing by broadening the scope for exemption from self-isolation of household contacts through a sector wide exemption approach;

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- ◆ non-household contacts released on negative LFD (and testing on days 2/4/7);
- ◆ a focussed approach to contact tracing, phased after Christmas.

46. **Cabinet is invited to agree to these adjustments to our contact tracing and self-isolation arrangements.**

47. Similarly there are increasing workforce impacts related to larger numbers being asked to isolate as a result of isolation policy changes that commenced from 11 December. While the CNI exemption schemes and exemptions for health and social care workforce mitigate some of these impacts, it is clear that the expected number of positive cases and the more stringent isolation policy will start to have significant impacts. Policy options that are under consideration post-Christmas include the following:

- ◆ reducing the isolation period of positive cases from 10 to 7 days;
- ◆ moving to a policy position, once a high proportion of the population (e.g., 80% of those eligible) have received their booster vaccine, of household contact isolation no longer being required on receipt of a negative PCR test if triple-vaccinated and asymptomatic.

48. Further discussion and policy options to address testing capacity concerns and isolation policy impacts is set out in **Annex M**.

Response structures over festive period

49. Separate advice on Winter Preparedness put to this week's Cabinet sets out the details of proposed arrangements for response structures over the festive period and beyond. This includes advice on mobilising SGORR(M) and SGORR(O), and on liaison with the SRP and LRPs. That advice also outlines proposed dates for further meetings of Cabinet over this period, and on potential recall of Parliament during recess. The details are set out here.

50. The last scheduled Cabinet meeting this year takes place on Tuesday, 21 December, with the first one of the New Year scheduled for Tuesday, 11 January. Parliament returns from recess on Monday 10 January.

51. During the recess period we expect that SGoRR(M) and the Ministerial Group on COVID Response will continue to meet. Contingency plans need to be agreed should developments with Omicron require Cabinet level decisions about further protective measures, including the need for legislation.

52. **I therefore propose that Cabinet should continue to delegate to the First Minister decisions that are broadly consistent with the strategic approach as already approved by Cabinet.** In using that delegation the First Minister will be supported as required by the Ministerial Group on COVID Response, and chief advisers and senior lead officials.

53. In the event that the First Minister and the Ministerial Group reach a decision to proceed in a way that is materially different from the current strategic approach, Cabinet could be consulted about any such decisions either in correspondence or, if the First Minister requests it, at a (virtual) Cabinet meeting. For planning purposes, we suggest that, if required, Cabinet might meet on both or either **Wednesday 29 December** and **Wednesday 5 January**. This would allow for the preparation of advice for Cabinet's consideration and the delivery of any regulations that might be required.

54. We are likely to see some demands for a recall of Parliament during the recess. If rapid legislation is required this would be made using the made affirmative procedure. Opposition parties may also demand a recall in order to be briefed about the latest position with Omicron. For planning purposes it would seem reasonable to assume that any recall would take place on the same day as the Cabinet meetings, i.e. Wednesday 29 December and/or Wednesday 5 January.

55. **Cabinet is therefore invited:**

- ◆ **to agree the proposed delegation of decision-making;**
- ◆ **to agree to hold dates for Cabinet on Wednesday 29 December and Wednesday 5 January;**
- ◆ **to note the likelihood of demands for a recall of Parliament during recess.**

Statement to Parliament and other communications

56. The First Minister intends to update Parliament on these considerations and Cabinet's conclusions in a statement planned for 21 December. **I invite Cabinet to delegate to the First Minister the finalisation of the terms of her statement.**

Conclusions

57. Cabinet is invited to:

- (a) **Note** the updates set out in this paper and its Annexes;
- (b) **Agree** that the existing protective measures should be extended for up to a further 3 weeks;
- (c) **Agree** that the Health Protection (Local Authority Directions) Regulations should be extended for up to a further 6 weeks;
- (d) **Agree** that the measures set out at paragraph 21 above (as 'Option B') are now put into effect, on the timescale set out at paragraph 40;
- (e) **Agree** the proposed parliamentary procedure;
- (f) **Agree** to the adjustments to contact tracing and self-isolation arrangements set out at paragraph 44;

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- (g) **Agree** to continue to delegate to the First Minister decisions that are broadly consistent with the strategic approach as already approved by Cabinet, with support from colleagues and advisers;
- (h) **Agree** to hold dates for Cabinet on 29 December and 5 January;
- (i) **Note** the likelihood of demands for a recall of Parliament during recess.
- (j) **Agree** to delegate to the First Minister the finalisation of the terms of her statement to Parliament on Tuesday 21 December.

JS
December 2021