

## UK COVID INQUIRY – MODULE 1

### WRITTEN CLOSING STATEMENT FOR NHS NATIONAL SERVICES SCOTLAND (“NHS NSS”)

1. NHS NSS raises three matters in this submission. Those are: (1) whether the Inquiry should recommend changes to civil contingencies legislation as recommended in the Alexander and Mann report; (2) a correction to the Scottish organogram; (3) a clarification to evidence given by Ms Jeane Freeman OBE.

#### **First: Potential changes to civil contingencies legislation**

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2. The Alexander and Mann report (INQ000203349) recommends at paragraph 274 that Category 2 responders under the Civil Contingencies Act 2004 (“the 2004 Act”) should be given the same duties as Category 1 responders.
3. NHS NSS is a Category 2 responder (see the 2004 Act, Schedule 1, part 4, paragraph 38 – NHS NSS is referred to there by its formal name, the Common Services Agency).
4. NHS NSS comments on the Alexander and Mann recommendation in two respects. First it comments on whether it, NHS NSS, should be given the duties of a Category 1 responder. Secondly, it comments on the recommendation that Category 2 responders generally should be given the duties of Category 1 responders.
5. The Alexander and Mann report contains at page 35 a table which provides a useful summary of the present position:

	Category 1 Responders <sup>82</sup>	Category 2 Responders <sup>83</sup>
Organisation type	At the core of the response to most emergencies	Co-operating bodies, less likely to be involved in the heart of planning work but will be heavily involved in incidents that affect their own sector
Examples of organisations	Emergency services; local authorities (county, district and unitary councils <sup>84, 85</sup> ); certain specified health bodies; environment agencies; Maritime and Coastguard Agency	Regulated utilities; transport providers; Health and Safety Executive; Office for Nuclear Regulation <sup>86</sup> ; Met Office <sup>87</sup> ; Coal Authority <sup>88</sup>
Duties	<ul style="list-style-type: none"> <li>• Assess the risk of an emergency occurring</li> <li>• Maintain emergency plans</li> <li>• Maintain business continuity management plans</li> <li>• Publish all or part of risk assessments made and plans maintained</li> <li>• Maintain arrangements to warn and advise the public in the event of an emergency</li> <li>• Share information with other local bodies</li> <li>• Co-operate with other local bodies</li> <li>• Provide advice and assistance to businesses and voluntary organisations about business continuity management (local government only)</li> </ul>	<ul style="list-style-type: none"> <li>• Co-operate</li> <li>• Share relevant information</li> </ul>

Should NHS NSS be given the duties of a Category 1 responder?

6. It is important in the first place to understand what NHS NSS does. It provides national strategic support services and expert advice to Scotland's health sector (essentially the Scottish Government and the various territorial Scottish health boards). It is not in general a direct citizen facing organisation, although SNBTS (Scottish National Blood Transfusion Service) responds to and supports any response in a major incident which can mean direct contact with the public in these instances.
7. When that is understood, then the appropriateness of NHS NSS being given the duties of a Category 1 responder becomes questionable. Many of the duties incumbent on Category 1 responders seem inapplicable to NHS NSS. One example seems obvious. Section 2(1)(g) of the 2004 Act creates a duty on Category 1 responders to "maintain arrangements to warn the public, and to provide information and advice to the public, if an emergency is likely to occur or has occurred". NHS NSS does not have a generally citizen facing role. The Scottish territorial health boards are of course Category 1 responders, and will no doubt maintain their own arrangements in that regard, as will the other Category 1 responders. Creating a duty on NHS NSS to interact at scale with the public for the first time in such circumstances seems potentially ill-advised. Such interaction might lead to public confusion about the interrelationship between NHS NSS and other public sector organisations and could add unnecessary and potentially mixed messaging.
8. Clearly giving extra duties to any organisation will create extra work, and it has to be recognised that such extra work will either require extra resources to be provided to the organisation or will require the organisation to redistribute its resources at least partially away from work that it presently undertakes. NHS NSS does not consider that giving it the duties of a Category 1 responder would represent an efficient use of its resources nor provide any sufficient benefit for that increased resource. Currently, NHS NSS is a strategic support and advisory body and responds at the request of the Scottish Government or Category 1 responders in a health context.
9. NHS NSS confirms that it conducts internal business continuity and resilience planning, all as set out in the Witness Statement of Mary Morgan, Chief Executive of NHS NSS (INQ000180843).

Should Category 2 responders generally be given the duties of Category 1 responders?

10. NHS NSS suggests that a blanket approach of giving all Category 2 responders the full suite of duties placed on Category 1 responders should not be followed. Its reasons against this approach specific to its own organisation are set out above.
11. While NHS NSS is not intimately familiar with the roles of all the present Category 2 responders it suggests that the present range of Category 2 responders covers a diverse range of bodies –

from the Met Office (2004 Act, Schedule 1, Part 3, paragraph 29D), to the Health and Safety Executive (paragraph 29), and The Coal Authority (paragraph 29C). A blanket approach to a wide range of Category 2 responders risks the imposition of inappropriate and inefficient duties being placed on organisations. If reform is felt to be desirable a more nuanced approach might be considered. In those circumstances, NHS NSS suggests that a consultation process should precede any reform.

## **Second: A correction to the Scottish organogram**

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12. The most recent iteration of the organogram (“2023-07-11 M1 Pandemic preparedness and response organograms”) contains three organograms relating to Scotland (pages 6, 7 and 8 of the 17-page pdf). Those organograms address different time periods but all three make the same error.
13. The error is that in the bottom right-hand corner of the page, immediately above the legend, the organogram states “*NHS National Services Scotland (Public Health Scotland from December 2019)*”. This is factually inaccurate. Public Health Scotland (PHS) is a separate organisation from NHS NSS. PHS became operational on 1 April 2020. NHS NSS is a continuing organisation, which is separate from PHS. PHS is also a continuing organisation.
14. NHS NSS suggests that the organogram should be corrected to show NHS NSS and PHS as the separate bodies that they are. NHS NSS suggests that it is unnecessary to go further than this and show the bodies that came together to form PHS but if the Inquiry wishes to do so then a comprehensive history of PHS can be found in the witness statement of Dr Jim McMenamin (INQ000183410). This includes the explanation that on 1 April 2020, NHS NSS’ Health Protection Scotland (HPS) (with the exception of Antimicrobial Resistance and Healthcare Associated Infection (ARHAI)) and its Information Services Division (ISD) both moved from NHS NSS to PHS.

## **Third: A correction to evidence given by Ms Jeane Freeman OBE on PPE**

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15. NHS NSS wishes to draw to the Inquiry’s attention an issue in the evidence of Ms Freeman, the former Cabinet Secretary for Health and Sport. She gave evidence virtually on 28 June 2023. At page 145 of the transcript from that day, from line 16, she stated:

“So you understand that in Scotland we have a single organisation, National Services Scotland, which operates as the procurement arm for our National Health Service, so we have a single procurement approach. So they had their own pile or stockpile or volume of PPE, and in addition they managed the Scottish share of the national stockpile.”

16. It seems to NHS NSS that that answer requires clarity. The reference to “the Scottish share of the national stockpile” might suggest that there were two stockpiles of pandemic PPE for Scotland. That is not correct.
17. The correct position, which NHS NSS does not think is controversial, is as follows:
  - a. Scotland has its own NHS. Health is a devolved matter, but even before devolution the Scottish health system operated independently.
  - b. Among its functions, NHS NSS undertakes procurement for the NHS in Scotland. Pre-pandemic and now, NHS Boards place orders for standard medical PPE with NHS NSS, who then supply such PPE to the NHS Health Boards. Scotland had and has its own general PPE stockpile, separate from any stockpile held by or on behalf of any of the other four nations.
  - c. NHS NSS provided a management service to the Scottish Government, to store and manage the Scottish share of the pandemic influenza pandemic stockpile. In 2009 the Department of Health contracted for a range of consumables for the UK in the event of a pandemic influenza outbreak. Scotland was a party to this purchase and took delivery of a share of the products based on the Barnett Formula. This share became Scotland’s pandemic influenza stockpile. NHS NSS undertook the management, storage and distribution of this pandemic influenza stockpile which included the PPE stockpile referenced in section b above.
18. NHS NSS confirms that the evidence given by Ms Freeman in relation to the Scottish PPE stockpile was accurate: the Scottish PPE stockpile was never exhausted.

NHS National Services Scotland

01 August 2023