



**NOTICE OF DETERMINATION  
CORE PARTICIPANT APPLICATION  
MODULE 2A - THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES (COSLA)**

**Introduction**

1. In my [Opening Statement](#) on 21 July 2022, I explained that Modules would be announced and opened in sequence, with those wishing to take a formal role in the Inquiry invited to apply to become Core Participants for each module. On 31 August 2022, the Inquiry opened Modules 2, 2A, 2B and 2C and invited anyone who wished to be considered as a Core Participant to those Modules to submit an application in writing to the Solicitor to the Inquiry by 23 September 2022.
2. The Provisional Outline of Scope for Module 2A provides that this module will examine the decision-making by the Scottish Government during the Coronavirus pandemic. Further modules are being announced on a rolling basis to address other aspects of the Inquiry's Terms of Reference.
3. On 13 September 2023 the Inquiry received an out of time application from The Convention of Scottish Local Authorities ("COSLA") for Core Participant status in Module 2A. This Notice sets out my final decision on the application.

**Application**

4. Applications for Core Participant status are considered in accordance with Rule 5 of the Inquiry Rules 2006, which provides:

*5.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.*

(2) *In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—*

- (a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;*
- (b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or*
- (c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*

(3) *A person ceases to be a core participant on—*

- (a) the date specified by the chairman in writing; or*
- (b) the end of the inquiry.*

5. Applications for Core Participant status made outside the Inquiry's timescales are considered in line with paragraph 10 of the Inquiry's [Core Participant Protocol](#) which provides:

*When inviting applications, the Inquiry will set a timeframe for applications to each module, or part of a module. Applicants are asked not to submit applications outside the timelines given by the Inquiry. The Inquiry will not consider applications that are outside the timescales provided by the Inquiry, unless the applicant provides an acceptable explanation as to why they did not submit their application within the relevant timeframe.*

6. In accordance with the approach set out in my Opening Statement and the Inquiry's [Core Participant Protocol](#), I have considered whether COSLA have provided an acceptable explanation as to why it did not submit its application within the relevant timeframe and I have considered whether the application fulfils the requirements set out in Rule 5(2) in relation to the issues set out in the Provisional Outline of Scope for Module 2A.

### **Summary of Application**

7. The application states that COSLA ("the Applicant") played a direct and significant role in relation to matters investigated under Module 2A and has a significant interest in all matters being investigated under Module 2A. It also states that the Applicant (and/or its member local authorities) may be subject to explicit or significant criticism during the Inquiry proceedings. It asserts that the Applicant has been an active participant so

far in the Inquiry in Modules 1 and 5, and has also been closely working with Module 2A by providing draft witness statements and documents. It is stated that the Applicant anticipates that its representative may be called to provide oral evidence to the Inquiry in public hearings scheduled for Module 2A.

8. The Application states that COSLA is the representative body of all of Scotland's 32 local authorities and accordingly, COSLA and its members were directly involved in many of the decisions made and actions taken in response to the pandemic. The application draws attention to wording in the Provisional Outline of Scope for Module 2A ("*relationships and communications with...local authorities within Scotland*"). The Applicant notes that the Scottish Government is a Core Participant in Module 2A<sup>1</sup> and submits that in order to ensure that a complete and accurate picture of those "*relationships and communications*" is provided to the inquiry, the other party to those relationships and communications should also be represented at the same level and status as the Scottish Government.
  
9. The Applicant further submits that it can provide the Inquiry with a proper understanding of the structure of local government in Scotland and in particular, the relationships during the pandemic between local authorities and the Scottish Government. The Applicant argues that without the opportunity to participate to the fullest extent in the Inquiry, the "*voice of local government in Scotland*" will not be heard in relation to matters that are of considerable importance to it. The Applicant also states that its sister organisations are designated Core Participant status in Module 2.
  
10. The Applicant's explanation for making its application outside the Inquiry's timescales is that during the Core Participant application window, it was not brought to the Applicant's attention that it may require to be involved in this Inquiry as well as the Scottish Covid Inquiry. The Applicant states that it was heavily engaged in providing information, documentation and witness statements to both inquiries, and in those circumstances the necessity of applying for Core Participant status in respect of Module 2A was unfortunately overlooked. The Applicant states that it sent an email to Mr Smith on 15 May 2023 regarding the possibility of COSLA being designated a Core

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<sup>1</sup> For the avoidance of doubt, Core Participant status on Module 2A has been granted to "Scottish Ministers".

Participant in respect of Module 2A but the Applicant did not receive a reply to that email. The Applicant states that it raised this matter again in a further email to Mr Smith of 17 August 2023, to which Mr Smith responded on the same day. It was following the conclusion of that correspondence that the Applicant decided that it would need to make a late application for Core Participant status.

### **Decision for the Applicant**

*Whether the application should be considered out of time*

11. The deadline for applications for Core Participant Status to Module 2A was 23 September 2022, meaning that this application was received significantly late, 354 days after the deadline expired. The application was received with only four months remaining until Module 2A's public hearings begin.
12. I remind myself that paragraph 10 of the Inquiry's Core Participant protocol states: *"...The Inquiry will not consider applications that are outside the timescales provided by the Inquiry, unless the applicant provides an acceptable explanation as to why they did not submit their application within the relevant timeframe."*
13. The aim of this Inquiry is to provide prompt and useful reports and recommendations. To achieve that aim, I must impose firm deadlines at different stages of the Inquiry. Compliance with those deadlines is important to ensure that the challenging timetable will be met. I also have to consider the need to be fair to all Applicants who have made their application for Core Participant status within the time period available as well as those who have made applications outside the application window and more generally that there is no unfair advantage obtained by a late application.
14. I therefore have first considered whether the Applicant has provided an acceptable explanation for the failure to comply with the deadline imposed for renewal.
15. I note that the application was received 354 days after the deadline. The application window was open from 31 August 2022 to 5pm on 23 September 2022. The application was therefore received almost one year after the closure of the application window, which had itself been open for over three weeks.

16. I understand from an email from the Applicant's Director of People Policy dated 23 November 2022 that the Applicant took a positive decision not to apply for Core Participant status at that time and then has had subsequent dealings with the Inquiry in providing evidence. It has therefore had ample opportunity to make an application and I do not consider that the Applicant has provided an acceptable explanation for the significant delay of 354 days in doing so.
17. In this regard, I would clarify that a response was provided to the Applicant's email of 15 May 2023 (referred to as unanswered in the application) by way of an email from Mr Smith's PA to the PA to the Applicant's CEO on 16 May 2023 with a suggested date for a meeting. There followed an exchange of emails over the next two days culminating in an email from Mr Smith's PA on 18 May 2023 to which the Inquiry has no record of a response. I also note that once the follow up email referred to in the application had been sent on 17 August 2023, it took almost another month for the Application to be made.
18. If I accept the Applicant's reasons given as acceptable explanations then, in effect, the deadline has no force. I also bear in mind that this is not a situation where material identified in the course of the Inquiry has come to light or circumstances have changed so that it is appropriate for an application to be made outside the initial window. I have also taken into consideration the need to be fair to all Applicants.
19. Accordingly, I do not consider that the Applicant has provided an acceptable explanation as to why it did not submit its application within the relevant timeframe. I am minded, in my discretion, to decline the Applicant Core Participant status for Module 2A for the reasons set out above.
20. I also bear in mind that simply because an Applicant has been refused Core Participant status in Module 2A that does not bar them from applying for or being granted Core Participant status in a later module or from providing relevant evidence to the Inquiry. This determination does not prevent the Applicant providing evidence to Module 2A as to the experience of local government in Scotland. The Applicant has been given the opportunity to provide a statement as to the experiences and

challenges of local government in Scotland to Module 2A. This will be considered very carefully.

21. For completeness, I will also go on to provide my conclusion on whether the Applicant would have been granted Core Participant status in Module 2A had its application been received during the application window.

*The substance of the application*

22. I have considered with great care everything that is said in the Applicant's application. Having done so, in my discretion, I consider that the Applicant does meet the criteria set out in Rule 5 for designation as a Core Participant in Module 2A and, therefore, if the application had been made in time, my decision would have been to designate the Applicant as a Core Participant in Module 2A.

23. The application explains that COSLA and its member authorities were directly involved in many of the decisions made, and actions taken, in response to the pandemic. In the context of the provisional scope of this Module, I am satisfied that the Applicant had a direct or significant role in core political and administrative decision making in Scotland (Rule 5(2)(a)).

24. Furthermore, I accept the significant interest the Applicant has in the matters for provisional investigation in Module 2A (Rule 5(2)(b)). However, the Core Participant Protocol provides that while I am bound to consider the factors set out in Rule 5(2), it is also open to me to take into account other relevant matters. I am not obliged to designate a person or organisation that meets the criteria set out in Rule 5 of the Inquiry Rules as a Core Participant.

25. However, as I have already stated, there are other ways in which the Applicant can contribute to the Inquiry. The Inquiry team will ensure that the interests of the Applicant are properly considered where appropriate.

26. I will keep the scope of Module 2A under review. I will consider any future applications the Applicant may wish to make on their merits at the time they are made.

**Rt Hon Baroness (Heather) Hallett DBE**

**Chair of the UK Covid-19 Inquiry**

**29 September 2023**