



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 2A - THE SECRETARY OF STATE FOR SCOTLAND**

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 15 September 2023 the Inquiry received an out of time application from The Secretary of State for Scotland ("SOSS") 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 the SOSS 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 SOSS ("the Applicant") has played and continues to play a unique and significant role in facilitating communication and joint working between the UK Government and the Scottish Government. The Applicant further submits that it is well placed to assist the Inquiry to achieve its aims by helping it to examine the

matters to be investigated in Module 2A, with references to paragraphs 1, 2, 3, 5 and 6 of the Provisional Outline of Scope for Module 2A.

8. The application further states that the Scottish Ministers have been designated Core Participant status for Module 2A alongside nine other organisations, but no central UK Government departments have Core Participant designation. The Applicant argues that there is a risk that the evidence and submissions from a central UK Government perspective in relation to issues likely to be explored by the Inquiry in Module 2A will be inadequate, one-sided, or imbalanced, particularly given the Core Participant designation granted to the Scottish Ministers.
9. The application also states that given its role and responsibilities, the Applicant has a significant interest in important aspects of the matters to which Module 2A relates. Additionally, the Applicant argues that given the 'political' nature of some of the Rule 9 requests and the potential submissions that may be made on behalf of the Scottish Government, there is a real risk that the Applicant may be subject to explicit or significant criticism during the Inquiry proceedings or in the Inquiry's report.
10. The Applicant's explanation for making its application outside the Inquiry's timescales is that the Office of the Secretary of State for Scotland is a very small office with limited resources. Given that it was not a lead government department and that the Applicant did not play a direct or central role in UK Government decision-making, initially it was not considered necessary or appropriate to apply for Core Participant status in order to engage with the Inquiry. Instead, the Applicant's expectation was that the Cabinet Office or other individual UK Government departments, which played a more direct and significant role in decision-making, would apply for and be granted Core Participant status in order to represent UK Government interests.
11. The application suggests that the timing of the application would not be unduly disruptive in terms of the Inquiry's preparation for Module 2A and in any event, the benefits of designating the Applicant Core Participant status in achieving the Inquiry's aims would outweigh any disruption.

Decision for the Applicant

Whether the application should be considered out of time

12. The deadline for applications for Core Participant Status to Module 2A was 23 September 2022, meaning that this application was received significantly late, 356 days after the deadline expired. The application was received with only four months remaining until Module 2A's public hearings begin.
13. 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."*
14. 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.
15. I therefore have first considered whether the Applicant has provided an acceptable explanation for the failure to comply with the deadline imposed for renewal.
16. I note that the application was received 356 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.
17. The Applicant states that its significance to Module 2A is apparent from sections referred to in the Provision Outline of Scope for Module 2A, which was published on 31 August 2022. The Applicant had an opportunity to apply within the set timeframe, whatever applications were made by other entities. Furthermore, the Applicant could have applied at any time after 21 November 2022 when the identity of Core

Participants in Module 2A was published, showing that the Cabinet Office was not a Core Participant in Module 2A. The Applicant 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 in doing so.

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 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 their 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. As a witness statement is being obtained from the Applicant, this determination does not prevent the Applicant providing evidence to Module 2A and the Inquiry will consider that evidence carefully once it is received.
21. 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.
22. 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

23. 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 would 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.

24. The application provides details of SOSS's role in facilitating communication and joint working between the UK Government and the Scottish Government given his remit and responsibilities. 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)). I also consider that the Applicant satisfied the criteria in Rules 5(2)(b) and 5(2)(c). 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. The Inquiry team will ensure that the interests of the Applicant are properly considered where appropriate. As I have already stated, It is not necessary, for example, for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. The Inquiry awaits a witness statement from the Applicant.

26. I will keep the scope of Module 2A under review. My decision not to designate the Applicant as Core Participant in this module does not preclude the Applicant from making any further applications in respect of any later modules. 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