

Witness Name: Alister Jack

Statement No.: First

Exhibits: AJ/01 - 78

Dated: 29 November 2023

**UK COVID-19 INQUIRY
WITNESS EVIDENCE FOR MODULE 2A**

WITNESS STATEMENT OF ALISTER JACK

I, Alister Jack, Secretary of State for Scotland will say as follows:

A. INTRODUCTION

1. I am making this witness statement ("statement") to the Covid-19 Inquiry specifically in response to the request for evidence, pursuant to Rule 9 of the Inquiry Rules 2006 ("R9R") (reference M2A/AJ/01). Where the matters I refer to in this statement are within my personal knowledge, I say so explicitly. Otherwise, the matters I address in this statement should be understood to have been informed by information that has been gathered from across the Scotland Office ("Office") and provided to me.
2. I have been the Secretary of State for Scotland since July 2019. Prior to this, I served as Parliamentary Private Secretary to the Leader of the House of Lords, Assistant Government Whip and Lord Commissioner of HM Treasury.
3. In response to the R9R, I have described the role of the Office and its involvement during the COVID-19 pandemic. In doing so, and where relevant, I have used case studies and examples in support of the views and comments I make. As a starting point, it is important that I set out the purpose of the Office and my role as Secretary of State. The objectives of the Office are to:

- strengthen and sustain the United Kingdom;
 - act as Scotland's voice in Whitehall and represent the interests of Scotland at Cabinet; and
 - champion the UK Government in Scotland and advocate for the UK Government's policies in Scotland.
4. As Secretary of State, my role is to facilitate and further these objectives. I am part of the UK Government and am accountable to the UK Parliament. Alongside the Parliamentary Under Secretaries of State (whose roles I discuss below), I am a member of Cabinet committees and sub-committees which touch upon my duties concerning Scotland.
5. Against this backdrop, the Inquiry will see that some of the questions outlined in the R9R go beyond what I and my Office can assist on.
6. I have adopted a different sequential order to my answers than that set out in the questions posed by the R9R. My response seeks to draw the threads of the R9R together in order to impart the necessary information in a useful manner. I have therefore adopted the following structure:
- (a) Scotland Office
 - (b) Coronavirus legislation
 - (c) Decision making during the pandemic
 - (d) Inter-governmental working
 - (e) Initial understanding of COVID-19
 - (f) Funding during the pandemic
 - (g) Alignment between the UK Government and Scottish Government
 - (h) Lessons learnt

B. THE SCOTLAND OFFICE

7. In order to fully assist, it is important that the Inquiry has a complete understanding of the legislative/policy framework which governs my Office. I set this out below.

Legislative roles and responsibilities

8. The Scotland Act 1998 (as amended by the Scotland Act 2012 and the Scotland Act 2016) identifies those areas that are reserved to the UK Parliament following the devolution settlement. Matters that are not explicitly reserved to the UK Parliament are

devolved to the Scottish Parliament (see Section 29 and Schedule 5 of the Scotland Act 1998). Put simply, if a matter is reserved to the UK Parliament, the Scottish Parliament cannot legislate on it.

9. Pursuant to Section 29 and Schedule 5 of the Scotland Act 1998, the following are reserved:

- (a) National security
- (b) Defence and the armed forces of the Crown
- (c) International relations
- (d) Emergency powers
- (e) Telecommunications and internet services
- (f) Transport (rail, aviation and maritime) security and the British Transport police
- (g) Immigration and nationality
- (h) Health and safety at work and control of dangerous substances
- (i) Cross-border rail services, aviation policy and regulation, and maritime issues (except for ports and ferries in Scotland)
- (j) Broadcasting

10. As Secretary of State for Scotland, I represent the interests of Scotland in Cabinet, particularly in those matters reserved to the UK Government by the Scotland Act. I am responsible for upholding the devolution settlement and act as guardian of the Scotland Act, especially in relation to orders made under its authority.¹ Section 35 of the Scotland Act 1998 invests the Secretary of State for Scotland with the power, in certain circumstances, to veto legislation enacted by the Scottish Parliament, even if it deals with a devolved matter.

11. Legal advice on Scotland and Scottish law is provided to the UK Government by the Office of the Advocate General for Scotland ("OAG"). The Advocate General is one of the three UK law officers, and the OAG is part of the UK Government.

Structure of the Scotland Office

12. For the relevant period, I was supported on ministerial matters by Parliamentary Under Secretaries of State for Scotland, Douglas Ross MP, Iain Stewart MP and David Duguid MP. I am now supported by John Lamont MP and Lord Offord of Garvel. We are

¹ AJ/01 - INQ000346026

collectively supported by the Scotland Office which is a small UK Government department led by a Director, Laurence Rockey, who is the accounting officer for the department.

13. The governance and accountability of the Scotland Office are discharged through:
- (a) a quarterly joint management board, which is chaired by me and attended by senior leaders and non-executive directors; and
 - (b) annual reports and accounts published on gov.uk.
14. The UK Parliament's Scottish Affairs Committee, which is appointed to examine the expenditure, administration and policy of the Office, provides Parliamentary accountability.

Policy roles and responsibilities

15. The Scotland Office has evolved since devolution. Originally, the Office dealt with most aspects of the domestic governance of Scotland.² However, since the devolution settlement, the responsibility of the Office is primarily to represent Scotland within the UK Government on reserved matters (as they are defined above).³
16. The Office is therefore not a policy-making department - rather, it considers how policy interacts with the devolution settlement and how to engage with the Scottish Government. Where possible, I and the Office seek to contribute to policy debate across Whitehall in support of these objectives. To this extent, I regularly engage ministerial colleagues on particular issues at Cabinet, sub-committees or bilaterally. That said, as part of the convention of Collective Responsibility, I am bound by the decisions made at Cabinet.
17. The Inquiry will also be aware of the write-round process whereby departments seek clearance on policy. From June 2020, I was appointed as a member of various committees. I had a formal role in signing off any COVID-19 related decisions that related to Scotland that were submitted to those Committees. These committee structures were regularly reviewed by the Prime Minister.

² AJ/02 - INQ000355772.

³ AJ/03 - INQ000355773

18. UK Government departments have direct lines of communication with the Scottish Government. However, I am kept closely informed about issues which involve both reserved and devolved matters, and more generally about relations with the Scottish Government. My special advisors and officials provide me and other UK Government departments with advice on the potential impact of proposed policies in Scotland. My officials engage with departments through their departmental devolution teams to provide that expertise.
19. I also have a role in considering any request for military aid to Scottish civilian authorities from the Scottish Government (a "MACA" request) before a formal request is made to the Ministry of Defence (MoD). During the pandemic, I considered a number of MACA requests from the Scottish Government and made formal requests to the MoD if appropriate.
20. The MoD *Joint Doctrine Publication 02: UK Operations: the Defence Contribution to Resilience* ("JDP-02") defines military aid to the civil authorities as "*Military operations conducted in the UK and Crown Dependencies involving the employment of Defence resources as requested by a government department or civil authority*".⁴ JDP-02 goes on to set out that this aid "*is subject to Defence ministerial approval, either prior to, or at the time of an event*". As defence is a competence reserved to the UK Government under the Scotland Act, the Scottish Government cannot request MACA support directly from the MoD. Rather, the MoD will expect to receive MACA requests from the Scotland Office. I also acted as an advocate for requests from Scotland, especially in a period where there were increased pressures on the defence estate from across Whitehall.
21. The Scotland Office scrutinises requests to ensure they are appropriate and that other options have been exhausted. My endorsement of any request from the Scottish Government does not guarantee that the Defence Secretary will agree to the request, but instead it provides reassurance that a request is appropriate and meets the bar set in JDP-02.

COVID-19

Overview

22. For the sake of completeness and avoidance of doubt:

⁴ AJ/04 - INQ000346027

- (a) My Office did not have particular policy responsibility for the UK Government's response to the pandemic.
- (b) It was not responsible for delivering the operational elements of the response to COVID-19.
- (c) The Office is not a Lead Government Department ("LGD") as defined by the UK Government's approach to resilience or crisis management.
- (d) UK Government departments retained policy and delivery responsibility for activity within their areas. For example, the Department for Transport was responsible for identifying and mitigating the impact on the transport system that usually falls within the competence of the Transport Secretary.

23. I did not have a formal role in ascertaining the state of Scotland's emergency preparedness. Responsibility for this would have rested with the Department for Health and the Cabinet Office through the Pandemic Flu Readiness Board and mechanisms such as the National Security Council Officials' Sub-Committee dealing with hazards and resilience. That said, my officials attended these fora and would have gained a high-level insight into activity being undertaken by the Scottish Government to prepare for a pandemic.

24. I did have a role, as did my officials, in ensuring that the devolution settlement with respect to Scotland was being appropriately considered as individual departments developed plans. To this extent, we set up a team to allow us to respond to the pace of policy development and its interaction with the devolution settlement. Whilst resilience was largely devolved, National Security and emergency powers are reserved and UK departments would need to ensure that the particular needs of Scotland have been considered.

Civil emergency response responsibility

25. Throughout the period of interest to the Inquiry, it was important to identify which aspects of the emerging pandemic response were reserved to the UK Government and which areas were the responsibility of the Scottish Government.

26. Civil contingency activity in the United Kingdom is based on the principle of subsidiarity, which states that the responsibility for responding to an emergency should in most cases be handled at the local level. Where the scale or complexity of an emergency exceeds the capability or capacity of the local level, central coordination or support is required.

This is provided by the UK Government with the Scottish Government taking the lead in Scotland, where appropriate.

27. UK Government departments specifically consider issues of devolution. However, the Scotland Office is often called upon to provide expert advice on issues where the interaction and responsibilities between the UK Government and the Scottish Government are complex. The ability of the Office to perform this function was particularly necessary when policy was being developed at pace, such as in the early period of the COVID-19 response.

28. In respect of reserved issues, the objective of my Office was to ensure that UK Government departments had appropriately considered the needs of, and the impacts on, people and businesses in Scotland. For example, the UK Border and the matter of international travel to the UK, including Scotland, was reserved. The Office considered the implications for the overall response and advised Whitehall on the potential challenges arising from this.

29. My Office would also assist and facilitate other UK Government departments with the task of consulting with and liaising with the correct contacts in the Scottish Government. For instance, early in the pandemic, my officials helped source information from the Scottish Government as requested by the Department for Health and Social Care ("DHSC").⁵

My responsibility and that of my Office

30. In fulfilling its responsibilities in the context of the COVID-19 response and the objectives (as defined), my Office and I:

- (a) Represented Scottish and departmental interests in UK Government fora/governance structures – including COBR and the governance structures created by the UK Government in response to the pandemic, such as ministerial implementation groups ("MIGs");
- (b) Advised departments on the devolution settlement, Scottish issues and specific communications issues;

⁵ AJ/05 - INQ000355248

- (c) Facilitated engagement between departments and the Scottish Government where possible and appropriate, and liaised with Scottish Government officials in the context of the COVID-19 response; and
- (d) Managed MACA requests from the Scottish Government.

31. The Office established a structure (COVID-19 Hub) to respond to and support ministers and the central governance set up to respond to the pandemic. Given the scale of the pandemic and its wide-reaching impacts, a large proportion of the Office's teams and members of staff were deployed to support the response. This included staff who worked full time on the COVID-19 response, as well as those who supported the work alongside their usual duties. Throughout the specified period, at least 30 officials (in a department of approximately 75 officials) were involved in the response and were charged with varying responsibilities and providing input alongside fulfilling the Office's pre-existing core functions.

MACA

32. One of the more visible forms of UK Government support in any crisis is the deployment of the armed forces or military assets. During the specified period, the Scotland Office received MACA requests from the Scottish Government. Officials from my Office had strong relationships with counterparts in the Scottish Government and the MoD; requests were raised and initially considered at this level. This facilitated timely assessment of potential MACAs and requests to the MoD.

33. As set out above, requests had to be made by the authorities in Scotland and required authorisation by me. I was often able to consider the request and provide authorisation, if appropriate, within 24 hours. This demonstrated my commitment to support the Scottish Government where I could in fighting COVID-19 despite what may have appeared to be differences between the Scottish and UK Governments, which I go on to address below.

34. Successful MACA deployments illustrate the good working relationships at an official level and, during the pandemic, included military planners, mobile testing units and vaccinators, RAF aircraft and the use of the Defence Estate. Specific examples included:

- (a) Helping the Scottish Government with strategic support
- (b) Helicopter support for the islands

- (c) Helping to set up the testing lab support at Queen Elizabeth University Hospital, Glasgow
- (d) Supporting testing facilities (including at Edinburgh and Glasgow airports)
- (e) Logistical support for PPE hubs
- (f) Planning for testing and vaccination
- (g) Vaccination centres set up and support
- (h) Vaccine delivery

35. During the pandemic, I had the privilege of visiting MACA deployments on the ground in Scotland.⁶ A comprehensive list of MACA requests is set out in Annex A of the Scotland Office statement.

Working relationship

36. Although there were obvious political differences between the UK Government and the Scottish Government which affected the relationship between ministers, the day-to-day working relations between the respective governments, most of which are conducted by officials who had developed strong and effective relationships, were not diminished.

37. For instance, I am satisfied that the UK and Scottish Governments worked well together on the drafting and passing of both the Coronavirus Act 2020 and Coronavirus (Scotland) Act 2020. This was also indicative of a positive working relationship between the officials of the UK and Scottish Governments at the beginning of the pandemic.

C. CORONAVIRUS LEGISLATION

38. The Coronavirus Act 2020 ("the Coronavirus Act") was to provide temporary emergency powers necessary to deal with the pandemic, including providing powers to the Scottish Government to make lockdown regulations in order to respond to COVID 19.

39. The Office's role in the development of the Coronavirus Act was no different to other legislation i.e. to ensure that the Act appropriately reflected the devolution settlement and that its provisions respected devolved competencies. If questions had arisen on whether an issue was reserved or devolved, we and the OAG would have been able to provide advice. The devolution settlement, and the conferral of powers for relevant

⁶ AJ/06 – INQ000346028

administrations, was an important factor in the drafting of this legislation, particularly in respect of health policy.

40. The Parliamentary Business and Legislation Cabinet Committee (“PBL”) cleared the Coronavirus Bill for introduction to the UK Parliament. The Scottish Parliament passed a legislative consent motion on 24 March 2020 and the Coronavirus Act received royal assent on 25 March 2020.
41. The Scottish Government also brought forward legislation in the Scottish Parliament which was designed to complement and supplement the Coronavirus Act passed by the UK Parliament. In respect of this legislation, once a bill was passed through the Scottish Parliament, in accordance with Sections 33 and 35 of the Scotland Act 1998, the Advocate General for Scotland and I were required to consider the legislation before the Presiding Officer of the Scottish Parliament could submit it for Royal Assent.
42. In normal circumstances, the UK Government has four weeks to consider a bill under these provisions before the Presiding Officer of the Scottish Parliament can submit it for Royal Assent. However, during the pandemic, the Scottish Government requested expedited consideration for coronavirus legislation, which the UK Government agreed to. This enabled the legislation to proceed to Royal Assent within a shorter timeframe than the four-week period allowed. This reflected our commitment to working closely and constructively with the Scottish Government to respond to the pandemic.
43. There are also a number of provisions within the Scotland Act 1998 that provide regulation-making powers to UK Ministers and/or Scottish Ministers. In particular, Section 93 of the Scotland Act 1998 enables the UK Government to undertake functions on behalf of Scottish Ministers and vice versa. Such arrangements, known as agency arrangements, can only be exercised if there are appropriate orders in place that have been passed by both the UK and Scottish Parliaments. For example, much of the testing for COVID-19 in Scotland during the specified period was provided (and funded) by the UK Government. This was made possible by an existing agency arrangement made under the Scotland Act 1998 called the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2011.
44. During the pandemic, the Scotland Office coordinated secondary legislation for other agency arrangements to allow the UK Government to support the response in Scotland. This included the following:

- (a) The Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) Order 2020 ("the 2020 Order"),⁷ made to enable the DHSC contact tracing application to operate in Scotland. (The order was passed by both Parliaments before the Scottish Government announced that it was to adopt a different application.) The Office also advised on the subsequent agreements made in respect of the Joint Biosecurity Centre (now part of the UK Health Security Agency); and
- (b) The Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) (No. 2) Order 2020 ("the 2020 Order No. 2"),⁸ made to allow the UK Health Security Agency to function in Scotland.

45. The 2020 Order was made under Section 93 of the Scotland Act in order to permit the Secretary of State for Health and Social Care to exercise functions ordinarily falling to Scottish Ministers. This exceptional arrangement was necessary so that the UK's contact tracing app could be operated in Scotland. On 15 June 2020, the Secretary of State for Health and Social Care wrote to the Cabinet Secretary for Health and Sport to seek final agreement for the making of the 2020 Order, copying me in.⁹ I sent this letter to the Secretary of State for Health and Social Care setting out my final agreement for the making of this Order.¹⁰

D. DECISION MAKING DURING THE PANDEMIC

Inter-governmental working between the UK Government and the Scottish Government

46. Governance for formal decision-making committees within the UK Government in relation to the COVID-19 response was the responsibility of the Cabinet Office. This was the primary venue for discussions between the Office and ministers in the Scottish Government and other UK Government ministers. As a Secretary of State, I attended Cabinet meetings and COBR meetings, which considered strategic or cross-cutting issues and, when appropriate, the Scottish Government was present. This was the forum through which Scotland Office ministers and other officials engaged with the UK Government and the Scottish First Minister at a high level.

⁷ AJ/07 – INQ000346029

⁸ AJ/07A - INQ000355774

⁹ AJ/08 - INQ000184508

¹⁰ AJ/09 - INQ000184510

47. As records held by my office indicate, on 22 April 2020, senior members of the Cabinet agreed that regular meetings with the First Ministers of the Devolved Administrations (“DAs”) were necessary, with the possibility of extending invitations to other regional leaders. My preference at the time was that these fora should not replace bilateral engagement, but should be held in addition to them as there was a risk that specific concerns only relevant to one nation might come to dominate the meetings.
48. The Chancellor of the Duchy of Lancaster’s (“CDL”) letter of 29 April 2020 to the Welsh First Minister sets out the UK Government position adopted in light of this meeting.¹¹ In CDL’s words: *“To ensure that the response to Covid-19 is as effective as it can be, it is crucial we continue to take a coordinated approach to decisions related to the current measures. It is also particularly critical that our communications on these matters remain closely aligned”*. I entirely agreed with this approach.
49. The structures then evolved, with COBR meetings ceasing to be the primary forum for the day-to-day management of the pandemic response. They were replaced with Ministerial Implementation Groups (“MIG”). This later evolved into the Covid-Operations (“Covid(O)”) Committee, which was chaired by the CDL. It was the primary decision-making forum on delivery of the response to the pandemic.
50. As the structures evolved, a decision was taken by the Cabinet Office to hold a dedicated weekly or so-called ‘Four Nations’ forum, chaired by the CDL, to discuss issues affecting Scotland, Wales and Northern Ireland. The ‘Four-Nations’ forum, chaired by the CDL, was set up in order to ensure that a regular forum existed for engagement between the four nations and to support the alignment of the response. These began in June 2020. The Scotland Office was invited to these meetings as a standing member, and I attended the majority of them.
51. The secretariat for inter-governmental meetings was provided by the Covid Taskforce and the Department for Levelling Up, Housing and Communities (“DLUHC”) who will, no doubt, hold information regarding the timeline of the meetings that took place, the agendas, attendees, actions and minutes.
52. To assist, appended to my statement is a chronology of the COVID-related Cabinet Office meetings I attended, including the CDL- First Minister (“FM”) calls, the various MIG

¹¹ AJ/10 - INQ000354857

fora, as well as the Covid(O) Committee meetings. In relation to the meetings I attended, I have provided to the Inquiry the briefings provided to me in advance of the meeting. This advice would have reflected the internal discussions my officials were having at the time, any debates and the Office's view. The briefings included handling and communications advice.

53. In addition, where readouts were taken by my Office, I have provided an overview of the discussions that took place. Given that these meetings were held regularly over the course of over 18 months, they covered a wide range of topics at a high level. I found the discussions in these meetings to be useful in developing a shared understanding between the UK Government and the DAs of the issues across the UK. The meetings were useful for me to attend as they allowed my UK Government ministerial colleagues and I to continue to make the case for adopting an aligned approach where this was appropriate.

54. As I discuss further below, I would often have telephone calls directly with the CDL where I would raise any issues regarding UK Government policy and my view of its application to or impact upon Scotland. These telephone calls were not minuted.

Decision-making structures within the Scottish Government

55. Mechanisms already existed to govern how the UK would respond to a civil emergency such as COVID-19. For example, Annex A of the Health and Social Care Influenza Pandemic Preparedness and Response policy paper, prepared by DHSC, sets out a national and local mechanism for the response.¹² Departments and LGDs with responsibility for various policies and the management of the pandemic developed individual mechanisms for engaging with and seeking the input of the Scottish Government. For example, DHSC convened a regular call between Health Secretaries which brought together the respective ministers with responsibility for health policy.

Informal decision-making

56. During the pandemic, in addition to the meetings I detail below, formal correspondence between the Scotland Office and the Scottish Government or other UK Government departments regarding the response in Scotland was primarily through ministerial and official letters. Scotland Office ministers wrote to UK Government and Scottish

¹² AJ/11 – INQ000346030

Government ministers in the course of their duties. By way of example, I have exhibited to my statement letters I sent to the Scottish First Minister on the vaccination programme and those I sent to the UK Health Secretary on orders made pursuant to Section 93 of the Scotland Act 1998.¹³

57. Many questions in the R9R relate to the use of informal communications regarding decision-making about the response to COVID-19 in Scotland. As stated above, the Office is not a LGD, and I was not a decision maker with regards to the response to the pandemic in Scotland or the UK. However, in pursuing the objectives of the Office, I would make telephone calls to various ministerial colleagues, which were ad-hoc and not minuted. The necessity to respond speedily to the pandemic made this type of communication essential.
58. As far as I can recollect, I have been, and am, a member of a number of WhatsApp groups which include my colleagues - such as a WhatsApp group for Ministers at the Scotland Office. These, however, did not relate to the pandemic and its response in Scotland.
59. Owing to a lack of storage capacity on my mobile phone, I cleared all WhatsApp messages some time ago. To the best of my recollection, the discussion on these groups did not relate to decisions about the response to COVID-19 in Scotland. I understand that messages between myself and relevant Cabinet colleagues have already been submitted - by them - to the Inquiry.
60. Also, to the best of my knowledge:
- (a) I did send some direct WhatsApp messages to my ministerial colleagues.
 - (b) I would occasionally exchange WhatsApps with my junior ministers in the Scotland Office about the business of the department. When he was the Parliamentary Under-Secretary of State for Scotland, Iain Stewart in particular would sometimes use WhatsApp to "check in" with me when he attended cross-government meetings on behalf of the Office.
 - (c) I also recall sending messages to my Cabinet colleagues about specific policy matters. For instance, I recollect an exchange with the Transport Secretary about the 'traffic light' policy that his department led on, and which required co-ordination with the DAs.

¹³ AJ/12 - INQ000184510; AJ/13 - INQ000184511; AJ/14 - INQ000184526.

(d) I also sent some messages to the former Prime Minister. As far as I can recall the purpose of these messages would have been to inform him of matters that were taking place in Scotland.

61. WhatsApp messages were also exchanged between myself and my officials during the pandemic. These were not used for the purpose of discussing information or advice relating to COVID-19 in Scotland or to record views and/or make decisions about the response to COVID-19 in Scotland. Where I wished to discuss any such matters, I would do so with my advisers either directly or through more formal meetings by telephone or video conference.

62. The majority of my communications in my role as Secretary of State for Scotland were via direct telephone calls or video conference meetings. I generally prefer to speak to people directly. As far as I can recollect, I did not engage in any other informal or private communication about significant decision-making that I have not mentioned above.

63. I do, however, confirm that I was a member of the WhatsApp group called 'Shoot Rules'. The membership of this group included other Ministers. I cannot recall who invited me to join it. The group was in relation to game shooting and the exemption to the "rule of 6".

E. INTER-GOVERNMENTAL WORKING BETWEEN THE UK GOVERNMENT, THE SCOTTISH GOVERNMENT AND THE OTHER DEVOLVED ADMINISTRATIONS IN WALES AND NORTHERN IRELAND

64. The engagement with DAs during the first stage of the COVID-19 response has broadly followed the principles set out in the *Draft Principles for Intergovernmental Relations*, drafted in 2019, which required respective governments to maintain positive and constructive relations, share information and respect confidentiality.¹⁴

65. As the Secretary of State for Scotland, I value and remain committed to effective intergovernmental working. A review of intergovernmental relations was undertaken jointly by the UK Government and the DAs to update intergovernmental structures and its conclusions were published in 2022.¹⁵ During the COVID-19 response, the draft

¹⁴ AJ/15 - INQ000346031

¹⁵ AJ/16 - INQ000346032

principles acted as the cornerstone for intergovernmental relations rather than the formal conclusions which we published in 2022.

66. The *Coronavirus (COVID-19) action plan* published on 3 March 2020 set out what the UK as a whole had already done, and planned to do further, to respond to the COVID-19 outbreak.¹⁶ The document recognised the respective roles and responsibilities of the UK Government and the DAs, and was endorsed by the Scottish Government. There was significant alignment at this stage and recognition of the need for a UK-wide response.

67. During the period relevant to the Inquiry, the Scotland Office also worked with the Cabinet Office Constitution Group, the Wales Office and the Northern Ireland Office to ensure:

- (a) UK-wide thinking into policy discussions within the UK Government, to ensure the response worked for all nations and that the UK Government could provide appropriate support to the DAs, and pool and share resources;
- (b) Use of UK-wide data to underpin UK Government decision-making and to communicate UK Government impact;
- (c) Effective engagement with the DAs to support a joined-up approach to the response;
- (d) Clear communications across the UK about the UK Government response to the pandemic; and,
- (e) Ensuring that UK departments understood the devolution settlements and operated within the existing framework.

F. INITIAL UNDERSTANDING OF COVID-19

68. The majority, if not all, of the questions posed by the Inquiry under this area go beyond the roles and responsibilities of my Office.

69. I am, therefore, unable to provide a direct response to questions relating to the initial understanding of the nature and extent of the COVID-19 threat and the pre-lockdown response. As I outlined above, these decisions lay with the specific departments of the UK and Scottish Governments.

G. FUNDING DURING THE PANDEMIC

¹⁶ AJ/17 - INQ000346033

70. The Scottish Government receives UK Government grants that fund most of its spending. The Barnett formula determines how the largest of these grants – the block grant – changes from one year to the next. The Barnett formula aims to give each country within the union the same pounds-per-person change in funds.
71. The Scotland Office has a technical role in the administration of funds to Scotland, which is to ensure that funds are transferred appropriately and that transfers are recorded correctly in our accounts. It is for the Scottish Parliament to determine how the funds are spent and for the Scottish Government to account for the expenditure.
72. The Scottish Government worked closely with HM Treasury on funding allocations as these allocations were provided directly by the Treasury. The Scotland Office engaged with a variety of stakeholders, including UK and Scottish Government departments, on the UK-wide response to the pandemic but was not involved directly in the funding arrangements. The total figures are set out in the corporate statement of my Office.
73. Additional support by the UK Government also included:
- (a) The Coronavirus Job Retention Scheme (furlough), which ran between March 2020 and September 2021 and supported 911,900 Scottish jobs. UK-wide 11.7 million employee jobs were furloughed through the scheme, at a cost of £70 billion;
 - (b) The Self-Employment Income Support Scheme, which provided 175,000 self-employed people in Scotland with grants totalling £1.7bn;
 - (c) The Coronavirus Business Interruption Loan Scheme and the Bounce Back Loan Scheme, which provided £4.1bn of loans to 99,792 businesses in Scotland;
 - (d) The Future Fund, which provided 23 loans valued at £8.3m to businesses in Scotland; and
 - (e) The Eat Out to Help Out scheme, which helped to support 4,775 hospitality businesses in Scotland throughout August 2020, with the value of discount claimed totalling £42.9m.
74. Throughout the pandemic, the UK Government also provided billions of pounds in additional Barnett funding to the Scottish Government - an extra £8.6 billion in 2020-21 and a further £7.1 billion extra in 2021-22. £14.6 billion of this Barnett funding was directly related to COVID spending.

75. The Scottish Government has responsibility for presenting a Scottish budget to the Scottish Parliament detailing its spending and taxing plans. It was accountable to the Scottish Parliament on how and where it spent funds allocated to it in response to the pandemic.

76. Where the Scottish Government raised concerns about the allocation of funding in respect of the pandemic response, these would have been raised directly with HM Treasury. For example, the then Finance Secretary Kate Forbes, wrote to the Chief Secretary to the Treasury ("CST") Stephen Barclay on 23rd May 2020 to seek clarity on Barnett consequentials.¹⁷ The Scotland Office would not have been a decision-making party to these discussions nor would it have been involved in the drafting of the letters between HM Treasury and Scottish Government.

77. The Inquiry has indicated that it is interested in whether any requests were made by the Scottish Government for additional funding during the specified period, which were declined. As set out above, this is a matter for HM Treasury.

78. In June 2020, the Scottish Government set out ten principles it proposed the UK Government should follow to support the UK economy and public finances as we began to recover from the impacts of COVID-19.¹⁸

H. ALIGNMENT BETWEEN THE UK GOVERNMENT AND THE SCOTTISH GOVERNMENT

79. It is not my role to achieve absolute alignment between the UK Government and the Scottish Government. It is, however, my role to take appropriate steps to strengthen/sustain the union, act as Scotland's voice in Whitehall and champion the UK Government in Scotland.

80. It is, and was, my personal view that alignment between the UK Government and the Scottish Government was in the best interests of the UK - for instance, alignment would allow for rules which were simpler to understand and would make messaging clearer in order to encourage greater adherence to the rules. This is reflected in the views I expressed at the relevant time.¹⁹

¹⁷ AJ/18 - INQ000226514

¹⁸ AJ/19 - INQ000346034

¹⁹ AJ/20 - INQ000346035; AJ/21 - INQ000346036

81. I supported the shared aim of the UK Government and the Devolved Administrations, in the *Coronavirus (COVID-19) action plan*, to

*ensure that the agencies responsible for tackling the outbreak are properly resourced to do so, that they have the people, equipment and medicines they need, and that any necessary changes to legislation are taken forward as quickly as possible.*²⁰

Again, this was a position which I advocated within Cabinet and directly to the PM and the CDL.

82. As the pandemic progressed, maintaining an aligned approach with the Scottish Government, both publicly and privately, became more difficult and there was clear divergence between the approaches and measures adopted by the UK Government and those adopted by the Scottish Government. Such divergence often led to confusion and was unhelpful in my view.

83. This is a useful juncture to explain what the UK Government and I meant by a UK-wide approach. The Scotland Act 1998 makes provision for the creation of a Scottish Government and Parliament with the powers to legislate and set policy on areas including health, education, policing, local government and many aspects of transport. This naturally allows Westminster and Holyrood to differ in their approaches to a range of issues. The COVID-19 pandemic affected all areas of public life including the areas set out above and, therefore, a level of divergence could be reasonably anticipated.

84. The Scottish Government's devolved responsibilities meant they had a key role in responding to the COVID-19 outbreak in Scotland. The Coronavirus Act also provided further powers to deal with some consequences of the pandemic.

85. The UK Government therefore did not expect that England, Scotland, Wales and Northern Ireland would adopt identical approaches to the management of the pandemic, not least because unique local factors (e.g., the shared land border between Northern Ireland and the Republic of Ireland) would need to be factored in, as would practical considerations such as the variety of operational structures in place across the UK. Indeed, the *Coronavirus (COVID-19) action plan* set out that: "*The exact response to COVID-19 will be tailored to the nature, scale and location of the threat in the UK, as our understanding of this develops*".²¹

²⁰ AJ/22 - INQ000346037

²¹ AJ/23 - INQ000346038

86. Instead, I believed that a coordinated, UK-wide approach, with room for divergence where necessary, was the most effective way of dealing with the risks posed by the pandemic. This was because, as I stated on many occasions, including at meetings between the UK Government and the DAs, COVID-19 did not respect borders.²² For example, I said in evidence to the Scottish Affairs Committee on 17 September 2020 that,

From our perspective and in our discussions with the devolved Administrations, the thing that keeps coming back to me is I find it very frustrating that we are one United Kingdom Government and we are three devolved Administrations but we are one country. We have borders that the virus does not respect. They are geographical borders, not physical borders. We have to understand people move around the UK, whether it is on business or visiting families or on holiday. What I have come to understand very strongly since I last spoke to you is that we need to stop the confusion. All the Administrations in these weekly meetings we have should be grown up and not be different for the sake of it, for whatever agenda they have. It has not brought anyone to a different outcome. The prevalence of the virus is as high in any part of the UK as another. You can point to low areas and high areas, but on average we are all four nations experiencing similar problems.²³

87. A successful approach to managing the virus across the whole of the UK was therefore required. The economy, supply chains, transport system and society of the UK are highly integrated meaning decisions taken in one part of the UK have significant effects on other parts of the country. In my view, any move away from such a coordinated approach carried substantial risks for people and businesses in Scotland as well as the rest of the UK.

88. What follows are examples of when, in my view, alignment was achieved and when it was not achieved to the detriment of the best interests of the UK.

Alignment achieved

1. UK—wide approach: the Coronavirus Action Plan

89. My consistent position throughout the pandemic was that there should be a joint, UK-wide approach to the pandemic. I argued strongly for such an approach within the UK Government,²⁴ and it was fully adopted by the Prime Minister, CDL and the Cabinet as a whole. In the early stages of the pandemic, in my view, it was also accepted by the Scottish Government and the other DAs.

²² AJ/24 - INQ000354859; AJ/25 - INQ000354860

²³ AJ/26 - INQ000346039

²⁴ AJ/27 - INQ000354859; AJ/28 - INQ000354860

90. At the outset, the UK Government and the DAs all agreed to the *Coronavirus action plan*²⁵ which set out:
- a. What was known about the virus and the disease it causes;
 - b. The planning for the outbreak of such an infectious disease;
 - c. The actions taken so far in response to the outbreak as well as plans for further action; and
 - d. The respective roles and responsibilities of the UK Government and the DAs.
91. It was followed by a series of co-ordinated announcements advising against non-essential travel and contact with others, asking the vulnerable to shield, publishing UK-wide social distancing guidance, and taking the decisions to close pubs, restaurants and schools. This culminated in the UK-wide decision to enter into lockdown announced by the PM on 23 March 2020, followed by announcements by the DAs. The lockdown came into force on 26 March 2020.
92. This co-ordination reflected the close working relationship between the Chief Medical Officers (“CMOs”) and the Chief Scientific Advisers (“CSAs”) of the UK Government and the DAs. They shared information and met regularly, with the CMOs meeting three times a week according to evidence to the House of Commons Science and Technology Committee. Joint decisions were also taken by the four CMOs to extend the self-isolation period from 7 to 10 days and to add change or loss of smell to the list of COVID-19 symptoms.
93. Although initially some representatives from the DAs were only observers at Scientific Advisory Group on Emergencies (“SAGE”) meetings, this changed in May 2020 when all DAs had official representatives. This group advised both COBR and the DAs directly and when the Scottish and Welsh Governments set up their own advisory bodies, the chairs were included on SAGE.
94. DA ministers were represented on both COBR and the MIGs, so would have received this advice on a regular basis and accepted at this stage that a co-ordinated, UK-wide approach represented the most effective way of addressing the challenges of the pandemic. Indeed, the First Minister had publicly declared at a press briefing on 21 April 2020 that *‘Trying to do things in a four-nation way given the geography of the four*

²⁵ AJ/29 - INQ000346040

*nations – or three of those nations in particular – seems to me to make sense. This is a virus. It doesn't respect borders or boundaries...it makes sense...to align our activity as much as possible.*²⁶

95. It was evident that, particularly in the early phases of the response, the data available to COBR did not always cover, or fully cover, the whole of the UK. The Commonly Received Information Pictures ("CRIP") on occasion did not include Scottish data. My concern was that there was a risk that ministerial colleagues may not have had a complete picture of the unfolding pandemic across the UK. This was in part driven by the difference in methodologies employed between the UK and Scottish Governments. This made like-for-like comparisons or aggregating data challenging, if not impossible in some cases. For example, in August 2020, the collection of data on death due to COVID-19 differed. The figure for daily deaths reported in Scotland was based on a positive COVID-19 test within the previous 28 days. In England, this figure captured those who had died having ever tested positive for COVID-19 (even if they had subsequently recovered) and counted them in the daily death number whatever the actual cause of death.²⁷

96. This pooling of data and expertise across the UK was something I strongly supported, and the governance structure agreed between the UK Health Secretary and DA ministers involved roles for DA ministers, CMOs and senior officials.²⁸

97. In short, the action plan received input from the DAs and represented a collaborative approach to limiting the spread of the virus and mitigating its impact.

2. The Coronavirus Act 2020

98. On 25 March 2020, the Coronavirus Act received Royal Assent. As detailed above, the Act was a result of intergovernmental collaboration and was passed with the consent of all three devolved legislatures. It is right to recognise that officials from the DAs worked together from mid-February to ensure the legislation was drafted to meet their needs.

3. Christmas 2020

²⁶ AJ/30 - INQ000346041

²⁷ AJ/31 - INQ000346042

²⁸ AJ/32 - INQ000346043

99. It was important to determine a UK-wide approach to restrictions over the festive period, and the arrangements for Christmas 2020 became a key topic of discussion in the CDL-FM calls held by the CDL. The matter was first discussed during a CDL-FM call on 18 November 2020. My Office had noted that a collective UK-wide approach to mass testing would facilitate the management of intra-UK travel in the Christmas period, which was an approach supported by the Secretary of State for Health and the CDL.²⁹
100. Following a further CDL-FM meeting on 21 November 2020, the Cabinet Office published the Joint Statement on UK-wide Christmas arrangements from the UK Government and DAs which set out an *'agreement on a single set of UK-wide measures to help people come together with their loved ones in a way that is as safe as possible'*.³⁰
101. However, there were concerns that securing further alignment would not be straightforward, given the extent to which the governments across the UK had diverged over the autumn. While there were plans to discuss the practicalities of intra-UK travel, my Office was pessimistic about agreement being reached on the issue.³¹
102. The situation had deteriorated in many parts of the UK ahead of a meeting on 15 December 2020. At the meeting, CDL, the First Ministers and the deputy First Minister for Northern Ireland all recognised the difficulty in moving away from the position expressed in the Joint Statement, which people had relied upon to make travel plans over the festive period and that needed to be weighed against the real risks associated with rises in infection.³² We all committed to reconvening the following morning after the Cabinet Office had prepared a further draft statement to maintain coherent messaging.
103. The CDL reconvened the meeting on 16 December 2020, ahead of which Cabinet Office officials circulated a fresh draft statement for review.³³ The CDL stated that his intention was to agree this before 3pm, so that an announcement could be made in time for the evening news. This statement was agreed and published the same day and included amended guidance under the headline *'A smaller Christmas is a safer Christmas, and a shorter Christmas is a safer Christmas'*.³⁴

²⁹ AJ/33 - INQ000354937 (note briefing appears to be incorrectly dated 8 November instead of 18 November).

³⁰ AJ/34 - INQ000346044

³¹ AJ/35 - INQ000354957

³² AJ/36 - INQ000354971

³³ AJ/37 - INQ000354971

³⁴ AJ/38 - INQ000346045

104. The coordinated decision-making and public communication from the UK Government and the DAs served to minimise the confusion amongst the public during an unusual and uncertain festive period.

4. Vaccines

105. The UK Government, through the Vaccines Taskforce, moved quickly to buy promising vaccines and secure sufficient doses for the whole of the UK. Additional funding in the sum of £440 million was also provided to support the Scottish Government with their vaccine rollout and wider COVID-19 response. Although the armed forces played an important role in setting up vaccination centres and in the delivery of vaccines, the rollout of the vaccination was the responsibility of the Scottish Government as part of their healthcare responsibilities.

106. I was absolutely determined that all parts of the United Kingdom should benefit from the foresight of the UK Government, and this was the case. It is an excellent example of why it was in the interests of everyone in the UK to work together to tackle the pandemic. I set this out in an article I published on 7 December 2020³⁵ and in a letter I addressed to the then First Minister on 2 February 2021.³⁶ In my letter to the First Minister, I outlined,

I am writing today to restate the UK Government's full support in rolling out the vaccination programme and fighting the pandemic across the whole country.

I'm sure you would agree with me that it is in everyone's interests that progress in vaccinating the people of Scotland matches the best efforts of the rest of the UK.

With that in mind, we stand ready to offer any support or assistance we can give you to accelerate your rollout programme.

107. When the Scottish Government stated that there were issues in relation to the distribution of vaccines, I investigated, and upon doing so, confirmed that this was not the case. I had regular calls with the Minister for Covid Vaccine Deployment, the Rt Hon Nadhim Zahawi MP, who confirmed that this was not the case. Ahead of a CDL-FM call on 30 January 2021, for example, I was advised that the Scottish Government had indicated that it may publish data relating to the supplies of vaccines that Scotland received, which risked breaching the contracts under which these vaccines were procured. This was discussed during the call.³⁷

³⁵ AJ/39 – INQ000346046

³⁶ AJ/40 – INQ000346047

³⁷ AJ/41 - INQ000355014

108. Ahead of a subsequent CDL-chaired meeting, on 10 February 2021,³⁸ I spoke to the CDL and secured a position whereby the UK Government would be able to point to allocated supplies in the event that the Scottish Government were to state that its vaccination programme was constrained.

5. PPE

109. There were concerns amongst the devolved administrations, including the Scottish Government, that supplies of PPE, testing equipment and ventilators to their territories were being diverted by the UK Government. At the Health MIG meeting on 2 April 2020, all three DA health ministers rejected what they considered to be a 'centralised system' of procurement of supplies and, in particular, the diversion of their existing contracts to DHSC.³⁹ I was advised by my officials ahead of that meeting that,

*'[t]he DAs must communicate their requirements and existing procurements and UK government bodies must disclose their stocks and what new contracts they have left', and distribution must be done on a transparent and equal basis.*⁴⁰

110. On the issue of procurement, it was the view of my Office that it was essential that the DAs were kept fully involved in the design of a system to manage healthcare supplies.⁴¹ With this in mind, my officials proposed via email to DHSC and DA officials that they should share responsibility for a collectively-held inventory of stocks and for agreeing the equitable distribution of supplies.⁴² It was later agreed that DHSC and the DAs would control their own stocks, but provide mutual aid to one another on a voluntary basis.

111. My officials also identified that a PPE plan prepared by DHSC did not deal with the challenging issues of monitoring stock across the UK or the equitable distribution between the four nations and was 'Whitehall centric'.⁴³ They worked with Scottish Government officials to suggest amendments to make it work for all parts of the UK. My Office took the view that it would be desirable for documents such as the PPE plan to be

³⁸ AJ/42 - INQ000355027

³⁹ AJ/43 - INQ000355251

⁴⁰ AJ/44 - INQ000355255

⁴¹ AJ/45 - INQ000355258

⁴² AJ/46 - INQ000355251

⁴³ AJ/47 - INQ000355260

devised from the beginning as UK-wide documents, in collaboration with the DAs, and branded as such.⁴⁴

6. Testing

112. My role in relation to testing, as in other areas, was to identify approaches that were in the best interests of people in Scotland and to advise the PM and Cabinet accordingly. It was my strong view that there were significant benefits to be gained from co-ordinating and pooling testing resources to maximise the number of tests carried out in Scotland. I was of the view that Scotland could benefit from economies of scale by joining the UK Government on procurement as the vaccine rollout demonstrated.

113. In practice, this meant that testing carried out by the NHS in Scotland was the responsibility of the Scottish Government. However, it became clear that testing capability needed to be increased substantially to meet the volume of tests required. In order to achieve this, as part of a collaborative effort, the centres run by the Scottish Government needed to be supplemented by those run by the UK Government.

114. In Scotland, all testing outside of the NHS was provided by the UK Government including eight drive-through sites, up to 59 walk-through sites and 42 mobile units plus the Glasgow Lighthouse Lab, part of a UK-wide network of labs which mass processed PCR tests round the clock. In all, around half of all COVID-19 tests carried out in Scotland were at testing facilities run by the UK DHSC.

115. Ministers and officials at the Scotland Office publicised this network of testing centres through visits and press releases.⁴⁵

Alignment not achieved

116. Although there were good examples of joint working, particularly in the early stages of the pandemic, the difference in emphasis and approach between the UK Government and the Scottish Government became more apparent over time.

117. In keeping with my role as the custodian of the Scottish devolution settlement and the provisions of the Coronavirus Act, my Office respected the right of the Scottish Government to make decisions in accordance with their devolved responsibilities.

⁴⁴ AJ/48 - INQ000355260

⁴⁵ AJ/49 - INQ000346048; AJ/50 - INQ000346049; AJ/51 - INQ000346050

118. Although relations between officials in the two governments were always good, there were clear political differences between the ministers in the Scottish Government and those in the UK Government. This meant that the Scottish Government did not always heed my advice for closer alignment, perhaps because (and I speculate) divergence would help to further their constitutional aim of achieving independence.

119. As a result, there were instances of divergence which, in my view, compromised the response to the pandemic. That divergence manifested, for example, in the approach to lockdown and the ways that the aims of lockdown were pursued; the return to work and leaving lockdown strategies that were developed; the vaccine certification scheme; the approach to border control (both internal and international borders); and communications/ public information messaging.

1. Approach to lockdown

120. The UK Government approach, which I fully supported and endorsed, shared a similar priority to that of the Scottish Government – namely to save lives. However, the Scottish Government adopted a stricter approach to lockdown regulations and restrictions than the UK Government which led to increasing divergence in some of the measures adopted.

121. For example, at a CDL-FM meeting on 24 July 2020, CDL and FM Scotland agreed to work on a shared statement that would set out the approach the four nations would take into winter.⁴⁶ This statement was eventually published on 25 September 2020.⁴⁷ However, my Office considered that work on the statement had been slowed by FM's desire for the statement to assert that all UK administrations were committed to elimination of the virus.⁴⁸ This, I understand, was contrary to public health advice from the Chief Medical Officer for England, who took the view that elimination was not a viable option in advance of a functioning vaccine. It is of note that, in evidence to Holyrood's Covid-19 Committee, Scotland's Chief Medical Officer, Dr Gregor Smith, was reported to have said that COVID-19 could not be eradicated, and the aim was to drive case numbers as low as possible.⁴⁹ In my view, this was therefore a political position adopted

⁴⁶ AJ/52 - INQ000354886

⁴⁷ AJ/53 – INQ000346051

⁴⁸ AJ/54 - INQ000354900

⁴⁹ AJ/55 - INQ000346052

by the FM to distinguish the approach taken by her government from that of the UK Government, rather than one based on public health advice.

122. The UK Government's approach recognised that strict lockdown restrictions were not an enduring solution. It was recognised by the UK Government that damage was being done as a result of lockdown restrictions including to people's wellbeing, to the economy and to the long-term public health, particularly for those with non-COVID-related health issues. These broader issues have only become more apparent since we have moved beyond the pandemic.

123. With the benefit of hindsight, we can now see that the UK Government approach was a sensible one. Although in March 2021, the then First Minister was still committed to the elimination strategy,⁵⁰ by May 2021 she had accepted that the vaccine had broken the link between cases, hospital admissions and deaths. Consequently, she dropped the elimination strategy. However, by then the different approach to lockdown had already been used as the basis for decision-making and further instances of divergence introduced by the Scottish Government.

2. Return to work

124. The Scottish Government took a much more cautious approach to return to work than the UK Government. It was unclear why the divergence was necessary or how it helped the fight against COVID-19. My position was that the whole of the UK should aim to leave lockdown together.⁵¹ This was to maintain the coherence of our response to COVID-19 and to avoid confusion within the UK.

125. The difference in rules caused confusion amongst businesses operating in Scotland; indeed they were placed at a disadvantage compared to their counterparts in the rest of the UK. Equally, people living in Scotland and working in England were unsure whether to follow the UK Government advice in May 2020, which was to go back to work where possible, or the Scottish Government advice, which was still to work from home.

⁵⁰ AJ/55 – INQ000346052

⁵¹ AJ/56 – INQ000346053

126. The issue of how an economic “restart” could be operationalised under extended non-pharmaceutical interventions (“NPIs”), such as social distancing measures, was discussed.⁵²

127. For instance, there were a number of examples provided in the Economic and Business Response Ministerial Implementation Group (“EBRIG”) Performance and Implementation Tracker for 23 April 2020,⁵³ where mixed messaging and divergence between the UK Government and the Scottish Government resulted in confusion, including:

- (a) In the Consumer Goods sector, there were staff concerns about social distancing especially in Scotland due to Scottish Government guidance being more restrictive than the UK Government guidance;⁵⁴
- (b) Staff in Scotland were refusing to work resulting in closure of manufacturing sites that could remain open under UK Government guidance;⁵⁵
- (c) Two Scottish paper mills had shut down due to the difference in guidance between UK Government and Scottish Government as to which businesses should remain open.⁵⁶

128. The EBRIG Performance and Implementation Tracker for 30 April 2020 highlighted further examples where mixed messaging and divergence continued to result in confusion,⁵⁷ including the following:

- (a) Consumer Goods manufacturers continued to report closures of factories in the UK due to staff concerns regarding social distancing, and in particular closures in Scotland due to Scottish Government guidance being more restrictive than the UK Government guidance;⁵⁸
- (b) In Aerospace, there was still confusion around the different focus of Scottish Government and UK Government guidance for business even after the Secretary of State's open letter to the manufacturing industry;⁵⁹

⁵² AJ/57 - INQ000355233

⁵³ AJ/58 - INQ000355538

⁵⁴ AJ/58 p. 38.

⁵⁵ AJ/58 p. 39.

⁵⁶ AJ/58 p. 79.

⁵⁷ AJ/59 - INQ000355539

⁵⁸ AJ/59 p. 44.

⁵⁹ AJ/59 p. 59.

- (c) In Construction, different policies between the UK Government and the First Minister had led to confusion amongst companies trading across England and Scotland. Most contractors operating in Scotland suspended their Scottish sites, putting them at a clear disadvantage compared to sites in England. Scottish industry was noted to be placing pressure on the Scottish Government to update their current policy and move this into line with the UK Government;⁶⁰
- (d) In the Electronics and Machinery sector, there were increased reports of employee disruption and increased union activity, with some staff requesting to be furloughed and continued pressure from MSPs to close;⁶¹
- (e) There were more stringent rules in Scotland (and Northern Ireland) for social distancing, which made it difficult for large manufacturers to provide blanket advice to its staff in the Food & Drink Manufacturing sector;⁶²
- (f) Greater stringency in Scotland as to key worker status had consequences for industries such as Electricity Generation (Onshore Wind & Solar), where a large proportion of onshore wind fleets exists. Key worker access was required for operation, maintenance and construction, and the perceived stringency of the Scottish safety guidance exacerbated this issue for onshore wind.⁶³

129. My Office suggested to Cabinet Office that the Scottish Government could be represented on the UK Government taskforces and that, in return, UK Government should be represented on Scottish Government's sectoral taskforces. It was noted that DAs were willing to work with the UK Government on future iterations and further guidance, and that businesses in Scotland were also keen to work with the department for Business, Energy and Industrial Strategy ("BEIS") on next steps so that there was as little divergence as possible. Following the somewhat confused approach to the BEIS guidance, the DAs stressed the need for clarity on whether decisions applied to England only and on how decisions would relate to DAs, including on international aviation and internal UK cross-border impacts. The Scottish Government stressed that their involvement in the UK Government taskforces would make the four-nations approach easier. My Office supported this view and agreed that in the future a clearer approach was required in relation to the territorial scope of guidance and consequently what stakeholder engagement needed to happen in Scotland.

⁶⁰ AJ/59 p. 65.

⁶¹ AJ/59 p. 71.

⁶² AJ/59 p. 82.

⁶³ AJ/59 p. 105.

3. Vaccine Certification Scheme

130. During the development of the vaccine certification scheme, my Office noted the need for a common system for the whole of the UK. As outlined in my briefing ahead of a CDL-FM call on 14 April 2021, my Office considered that *'[i]t would be highly disadvantageous to have four separate systems, with persons living on one side of a border and working on the other, requiring separate certificates'*.⁶⁴

131. At the meetings, there was agreement that there should be a certification scheme agreed across the four nations.⁶⁵ However, there were technical hurdles to overcome to allow devolved NHS IT systems to use the app under development by DHSC and NHS England.⁶⁶ I had met with officials from the Department and Social Care and NHSx on 22 April to explore the possibility of a UK-wide approach to certification. Ahead of a subsequent meeting on 28 April 2021, my officials flagged the risk that the Scottish Government was seeking its own technical solution to this issue and considered that the way to combat this was for officials in the relevant policy teams to 'move at pace to a) offer a digital solution that could work for the UK, b) involve the DAs in policy development on certification and international travel and c) allow an immediate decision to be taken on the 17 May travel deadline'.⁶⁷

132. The briefing note ahead of a CDL-FM call on 14 July 2021 records the work done by my officials to ensure that the systems being developed for a vaccine certificate would be interoperable with the relevant international standards.⁶⁸ I had also requested an urgent meeting with officials in the NHSx Certification team, to discuss coordination between the UK Government and DAs.

133. In my view, it would have been far better to work together to deal with the potential issues in relation to a joint app which would have avoided the practical difficulties that people across the different parts of the UK faced. This was in addition to the expense of creating their own app which cost nearly £7 million.

⁶⁴ AJ/60 - INQ000184457

⁶⁵ AJ/61 - INQ000184458; AJ/62 - INQ000355070

⁶⁶ AJ/63 - INQ000184457 (an earlier draft of this note is at INQ000355059).

⁶⁷ AJ/64 - INQ000355065

⁶⁸ AJ/65 - INQ000355104

4. Immigration and border control

134. The rules in relation to quarantine for people coming into the UK also varied during the pandemic which was a source of frustration to the tourism industry which sought a UK-wide approach. As the Rt Hon Grant Shapps MP said on 4 September 2020, which also represented my own view, these differences were also enormously confusing for travellers and a UK-wide approach would have prevented this.⁶⁹

135. I advocated alignment in the approach to travellers to the UK who have received vaccines, not recognised by the Medicines and Healthcare Regulatory Agency, noting that:

It is important that we align not just policies for inbound travel and for domestic use in England, but across the whole of the UK. For the benefit of everyone in the UK we must try and agree a common cross UK position. Recognising vaccines, added in the future to the WHO Emergency Use List, should be based on the collective view of the four CMOs.⁷⁰

136. However, entry into the UK became a point of significant divergence between the position of the Scottish Government and the UK Government. As detailed in my briefing notes ahead of CDL-FM meetings on 3 and 10 February 2021, I was advised that the Scottish Government had introduced regulations requiring all international travellers arriving directly into Scotland from outside the Common Travel Area to stay in quarantine hotels.⁷¹ This differed from the position in England, which required only people from high risk ("red list") countries to quarantine in hotels. Travellers from other destinations were permitted to isolate at home instead.

137. This divergence risked confusion amongst the public - the situation was unclear for people travelling to Scotland after arriving in another part of the UK. In particular, it created a loophole that travellers who entered another part of the UK from a non-"red list" country and then travelled to Scotland would be able to self-isolate at home. If the same traveller had entered Scotland initially they would have to pay to stay at a quarantine hotel. Efforts were made by officials from the DAs and the DHSC to understand whether there could be alignment on this issue. This issue was ventilated at

⁶⁹ AJ/66 – INQ000346054

⁷⁰ AJ/67 - INQ000355519

⁷¹ AJ/68 - INQ000355020; AJ/69 - INQ000355027

the CDL-FM call, and First Minister was clear in her preference for a comprehensive quarantine approach to be adopted across the UK.⁷²

138. It is right, however, to recognise positive alignment in this area. The issue of international travel arose again in April 2021 when, ahead of a CDL-FM meeting on 28 April 2021, I was briefed that should the UK Government's plan at the time, which was to resume non-essential travel from green countries on 17 May 2021, go ahead, it would "likely ensure that a UK wide consensus cannot be reached and will have consequences for agreeing cooperation in respect of certification on international travel".⁷³ However, I was pleased to see that all DAs had subsequently adopted the traffic light system, and the Scottish Government and Welsh Government had adopted the same list of green countries as the UK Government.

139. My Office noted that DA officials had been clear that, to continue a UK-wide approach, they must be invited to the Covid(O) meetings where these decisions were made. It was my view that it would be sensible to allow DA ministers to attend the relevant Covid(O) meetings.

5. Communications and public information messaging

140. In the early stages of the pandemic, it was vital to ensure that the communication of updates on the response to COVID-19 was coordinated properly. Important decisions were taken at COBR meetings, and it was important not to disclose these until the appropriate time.

141. Throughout the pandemic, Scotland Office Communications sought to identify opportunities for UK-wide messaging, particularly in the early phases. Our view was that consistent messaging would be the most effective way of achieving clarity and supporting compliance. This followed the example set by the *Coronavirus action plan*.⁷⁴ Another example was the letter issued to households by the Prime Minister which we viewed as an opportunity to communicate on a UK-wide basis.⁷⁵ Scotland Office officials and ministers emphasised the PM's letter was an opportunity to communicate UK-wide.

142. However, there were a number of instances when the timing and content of communications were not aligned, which was particularly unhelpful and led to confusion.

⁷² AJ/70 - INQ000355021

⁷³ AJ/71 - INQ000355065

⁷⁴ AJ/72 - INQ000346055

⁷⁵ AJ/73 - INQ000346056

For example, when it was decided to move from the “contain” to the “delay” phase, it was the First Minister who announced this first along with a change in the advice to those who had symptoms (requiring to self-isolate for a period of seven days). She also disclosed that they had decided not to close schools at this time.⁷⁶ This announcement was a UK-wide one that should have been made by the Prime Minister prior to the First Minister.

143. By announcing these decisions prematurely, the First Minister, in my view, breached Collective Responsibility, and the protocol that decisions taken at COBR were confidential until announced in the accepted manner. This undermined trust between the UK and Scottish Governments. Objectively, it signalled that the Scottish Government was not “fully signed up” to a coordinated response and was willing to act unilaterally in its response to the pandemic.

144. During the pandemic, it was also very important to communicate simple, clear messages to the public about how to prevent the spread of the virus. The Scottish Government launched its FACTS campaign to this end. Unfortunately, according to a YouGov poll, less than 2 per cent of Scots were able to name what all five letters of the FACTS acronym stood for.⁷⁷

145. In contrast, the UK Government’s simpler message of Hands, Face, Space was deemed to be more effective by advertising industry representatives. It would have been much better if the Scottish Government had acknowledged this and adopted the UK Government slogan when it was launched. Instead, the Scottish Government carried on with its own slogan.⁷⁸

I. KEY CHALLENGES AND LESSONS LEARNED

146. As I have stated above, the Scottish devolution settlement operates on a “reserved model”, i.e., that the Scottish Parliament has general powers to legislate on matters in Scotland, unless it has been reserved to the UK Parliament (see Section 29 of the Scotland Act 1998). Health is a devolved matter, and this meant that the Scottish parliament had the ability to legislate to provide Scottish Government ministers with

⁷⁶ AJ/74 - INQ000346057, AJ/75 - INQ000346058

⁷⁷ AJ/76 - INQ000346059; AJ/77 - INQ000346060

⁷⁸ AJ/78 - INQ000346061

powers to make public health regulations. The Public Health (Scotland) Act 2008 did exactly that by placing a duty on Scottish Ministers to protect public health which includes "infectious diseases which constitute a danger to human health". The scale of the COVID-19 pandemic, however, exceeded the ability of the Scottish Government to protect the public using their existing powers, (as was the case in England, Wales and Northern Ireland).

147. The approach taken at the time was the introduction of the Coronavirus Act 2020 which provided for new powers in a number of areas e.g., in health, education and justice. These powers allowed the Scottish Government to, for instance, create regulations to respond to COVID-19 -see for instance Schedule 19 of the 2020 Act, which authorised Scottish ministers to make regulations, "*for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland (whether from risk originating there or elsewhere).*" In effect, the Coronavirus Act supplemented and strengthened the existing legislative frameworks. This approach allowed for the three devolved nations to manage emergency responses to the pandemic with significant degrees of autonomy.

148. It follows that the most significant public health measures adopted to deal with the pandemic were created by regulations issued by each devolved government. This included:

- general and local lockdowns and other restrictions on freedom of movement;
- restrictions on travel, including international travel, travel within each nation, and travel between nations;
- restrictions on public and private gatherings and events, indoors and outdoors;
- the closure of schools and nurseries, shops and other non-essential business;
- mandated mask-wearing; and,
- screening, isolation and quarantine requirements.

149. I understood the necessity of this approach at the time. If the UK Government were to have taken unilateral charge of the pandemic response by, for example, triggering Part 2 of the Civil Contingencies Act 2004 this would have brought its own challenges. However, I believe that the approach adopted arguably prevented a coordinated and centralised approach in response to the pandemic, which I believe would have been more effective. In my view, it also encouraged the Scottish Government to do things

differently often when there seemed to be no need or justification for it. In future, achieving a UK-wide response to a national emergency such as a pandemic should be a priority.

150. Put simply, a centralised decision making/legislative approach would have been better placed in responding to the pandemic across all nations because:

- (1) of the size of the UK;
- (2) it arguably would have improved the efficacy of the response and delivery of regulations;
- (3) it would have prevented any confusion about the application of the regulation across the nations;
- (4) it would have concentrated the minds of politicians and others to one purpose, i.e., the centralised response to the pandemic; and
- (5) ergo, it would have removed the option of using the pandemic to further political aims, which is what occurred, in my view.

151. It is, in my view, crucial that when the United Kingdom is next faced by a national emergency of a similar nature or scale that it responds as one, and that the UK Government has the means to do this. It is a matter for Parliament as to what is the appropriate legislative vehicle in order to achieve this. However, having seen first-hand the interaction between the UK and Scottish Governments during the pandemic, my view is that the approach and decision making should be a more centralised one. This view does not undermine the devolution settlement. In fact, decisions on emergency powers are reserved to the UK Government and one of the fundamental duties of government across the UK is to protect its citizens in devastating times, such as a pandemic. By adopting this approach, I believe it would be able to fulfil this duty more effectively.

J. DOCUMENTS

152. As I understand, having undertaken a reasonable search, my Office has disclosed all of the relevant documents held on our system to the Inquiry.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Personal Data

Signed: _____

Dated: _____

30th November 2023.

