



NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 5 - PROCUREMENT

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 24 October 2023 the Inquiry opened Module 5 and invited anyone who wished to be considered as a Core Participant to that Module to submit an application in writing to the Solicitor to the Inquiry by 17 November 2023.
2. On 17 November 2023 the Inquiry received an application from the Right Honourable Baroness Arlene Foster DBE and Mr Paul Givan MLA for joint Core Participant status in Module 5. This Notice sets out my determination of the application.
3. The Inquiry has published the [Provisional Outline of Scope](#) for Module 5, which states that this module will consider and make recommendations regarding the procurement and distribution to end-users across the four nations of the United Kingdom of key healthcare related equipment and supplies, including PPE, ventilators and oxygen. Further modules will be announced and opened in due course, to address other aspects of the Inquiry's Terms of Reference.

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. In accordance with the approach set out in my Opening Statement and the Inquiry's [Core Participant Protocol](#), I 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 5.

Summary of Application

6. The application is made on behalf of the Right Honourable Baroness Arlene Foster DBE, First Minister of Northern Ireland between 11 January 2020 and 14 June 2021 and Mr Paul Givan MLA, First Minister of Northern Ireland between 17 June 2021 and 4 February 2022.
7. The application is made on the basis of Rule 5(2)(a), (b), and (c) of the Inquiry Rules 2006.
8. The application submits that the Applicants each played a substantial and significant role in Executive decision making in Northern Ireland and in leading the response to the Covid-19 pandemic including in relation to PPE procurement and liaison with the UK Government and other devolved administrations, and advice to the public on face masks. For this reason, the application also submits that the Applicants each have a significant interest in the matters to be considered by Module 5 and may each be subject to criticism within the Module's investigation.

9. The application also notes the unique constitutional arrangements in place in Northern Ireland arising from the mandatory coalition system of government.

Decision for the Applicant

10. I have considered with great care everything that was said in the application. Having done so, I consider that the Applicant played, or may have played, a direct and significant role in relation to the procurement of key healthcare equipment and supplies during the pandemic and that it may be subject to explicit or significant criticism. I am satisfied that the tests set out under Rule 5(2)(a) and (c) are therefore met. I have decided to exercise my discretion to designate the Right Honourable Baroness Arelene Foster DBE and Mr Paul Givan MLA as joint Core Participants in Module 5.

Legal Representation

11. Applications for designation as the Recognised Legal Representative of a Core Participant are governed by Rules 6 and 7 of the Inquiry Rules 2006, which provide:

6.—(1) Where—

- (a) a core participant, other than a core participant referred to in rule 7; or*
- (b) any other person required or permitted to give evidence or produce documents during the course of the inquiry,*
has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.

7.—(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that—

- (a) their interests in the outcome of the inquiry are similar;*
- (b) the facts they are likely to rely on in the course of the inquiry are similar; and*
- (c) it is fair and proper for them to be jointly represented.*

(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.

(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.

(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.

12. I am satisfied that the Right Honourable Baroness Arlene Foster DBE and Mr Paul Givan MLA have appointed John McBurney of John McBurney Solicitors as their qualified lawyer in relation to this Module. I therefore designate John McBurney as the Right Honourable Baroness Arlene Foster MLA and Mr Paul Givan MLA's recognised legal representative in accordance with Rule 6(1).
13. Directions will be given in relation to applications for an award under section 40(1)(b) of the Inquiries Act 2005 of expenses to be incurred in respect of legal representation, at the forthcoming preliminary hearing. I will determine any such applications in accordance with the provisions of section 40 of the Inquiries Act 2005, the Inquiry Rules 2006, the [Prime Minister's determination](#) under section 40(4) and the [Inquiry' Costs Protocol](#).

Rt Hon Baroness Heather Hallett DBE
Chair of the UK Covid-19 Inquiry
11 December 2023