



**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 NHS National Services Scotland (“NHS NSS”) for 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 NHS NSS, a body within the NHS in Scotland that provides services and advice to the NHS and the wider public sector within Scotland.
7. The application is made on the basis of Rule 5(2)(a) and (b) of the Inquiry Rules 2006.
8. The application submits that NHS NSS played a direct and significant role in relation to certain matters specified within the provisional outline of scope for Module 5 and has a significant interest in those matters, particular as a result of NHS NSS' National Procurement service which provides a key service to all NHS Scotland territorial health boards and special boards of key healthcare related equipment and supplies.
9. The application notes that, prior to the pandemic, National Procurement provided resilience services for medicines and stock management for the UK pandemic influenza preparedness stockpile and supplied pandemic goods which included key healthcare equipment and supplies to hospitals in Scotland. During the pandemic,

NHS NSS National Procurement took on additional responsibilities for the sourcing, stocking and distribution of a range of PPE, medical equipment and consumables; worked with the Scottish Government regarding due diligence checks relating to PPE; and assisted the other devolved administrations where it was able to.

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 the tests under Rule 5(2)(a) and (b) are therefore met and I have decided to exercise my discretion to designate NHS NSS as a Core Participant 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 NHS NSS has appointed Morag Shepherd of NHS Scotland as its qualified lawyer in relation to this Module. I therefore designate Morag Shepherd as NHS NSS'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

12 December 2023