



**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 16 November 2023 the Inquiry received an application from Scottish Ministers 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 Scottish Ministers, on the basis of Rule 5(2)(a) and (b). Scottish Ministers consider that they played a direct and significant role in the matters relating to Module 5 and that they have a significant interest in important aspects of Module 5.
7. The application states that the Scottish Government's involvement in procurement was limited as it was primarily the responsibility of National Services Scotland (NSS). However, within the Scottish Government, the Health Emergency Preparedness, Resilience and Response Division led on the initial stages of supply and procurement of PPE to NHS Scotland, including liaison with the other UK Nations. Scottish Government officials also regularly attended UK Health Security Agency ("UKHSA") meetings where there was the opportunity to input requirements into any procurement proposals and related operational plans. The Scottish Government also supported the coordination of procurement of PPE for non-health organisations, and essential services with limited access to supply.

8. Further, the application submits that Scottish Ministers will have a significant interest in any recommendations that the Inquiry may make in relation to the practice, policy, or legislation around procurement activity which will inform relevant future decision-making in Scotland.

### **Decision for the Applicant**

9. 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 significant and direct role in relation to the procurement and distribution of key equipment and supplies during the pandemic. Having regard to the provisions of Rule 5(2), I have decided to exercise my discretion to designate Scottish Ministers as a Core Participant in Module 5.

### **Legal Representation**

10. 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.*

11. I am satisfied that Scottish Ministers have appointed Caroline Beattie of the Scottish Government Legal Directorate as their qualified lawyer in relation to this Module. I therefore designate Caroline Beattie as Scottish Ministers' recognised legal representative in accordance with Rule 6(1).
  
12. 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**