



**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 a grouping of Scottish Health Boards 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 a grouping of Scottish Health Boards comprising Scotland's fourteen territorial health boards together with five national non-geographic special health boards (the "Scottish Health Boards"). The application states that Scottish Health Boards provide almost all secondary healthcare within Scotland and, in some circumstances, also have responsibility for primary healthcare, or the junction between primary and secondary healthcare (for example, some ambulance provision and out of hours emergency contact). The group does not include National Services Scotland or Public Health Scotland who are separately represented.
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 Scottish Health Boards have a direct and significant role in the matters being investigated by Module 5 of the Inquiry due to their role involvement in the procurement and distribution of healthcare-related equipment and

supplies in the healthcare system in Scotland. In particular, during the pandemic, Scottish Health Boards were involved in the provision and distribution of PPE to end-users, sourcing and distributing healthcare equipment such as ventilators, hospital beds and mattresses in hospitals, fitting staff with Filtering Face Piece Level 3 (FFP3) masks, and providing training to staff on face fit testing; entering into contracts for procurement, establishing a multiagency PPE steering group, setting up and running PPE hubs across Scotland, implementing government guidance in relation to the use of PPE.

9. The application submits that the Scottish Health Boards have a significant interest in important aspects of Module 5, particularly because any recommendations as to the future procurement and distribution of PPE and other healthcare-related equipment made by the Chair will likely need to be implemented, at least in part, by the Scottish Health Boards.
10. Further, given the involvement of the Scottish Health Boards in relation to the supply and distribution of PPE and other healthcare-related equipment to end-users, the application submits that there is potential for them to be subject to criticism. The application notes that public concern has been raised in Scotland regarding the adequacy of the supply, storage, and distribution of PPE.

### **Decision for the Applicant**

11. 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)(a) and (b) in particular, I have decided to exercise my discretion to designate the Scottish Health Boards as a Core Participant in Module 5.

### **Legal Representation**

12. 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.

13. I am satisfied that the Scottish Health Boards have appointed Elaine Coull of NHS Scotland as their qualified lawyer in relation to this Module. I therefore designate Elaine Coull as Scottish Health Boards's recognised legal representative in accordance with Rule 6(1).

14. 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**