

**Witness Name: Louise Macdonald**  
**Statement No.: 2**  
**Exhibits: LM2**  
**Dated: 23 June 2023**

**UK COVID-19 INQUIRY**  
**MODULE 2A**

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**STATEMENT BY DIRECTOR GENERAL COMMUNITIES**

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**This statement is one of a suite provided for Module 2A of the UK Covid Inquiry and these should be considered collectively. This statement will cover the following areas; the structure and role of the Equality, Inclusion and Human Rights Directorate (EIHRD), inputs to decision making, public communications, Equality Impact Assessments, data and information handling, committee appearances and lessons learned.**

**In relation to the issues raised by the Rule 9 request, dated 10 March 2023 served, on the Scottish Government, in connection with Module 2/2A, the Director General Communities will say as follows: -**

**Structure and role of the EIHRD and the key individuals within it generally and during the Covid-19 Pandemic**

1. The Directorate for Equality, Inclusion and Human Rights (EIHRD) did not exist as a single Directorate prior to the relevant pandemic period (1 January 2020 to February 2022). In January 2020, the Connected Communities and Equality and Human Rights Divisions were two separate entities within the Local Government and Communities Directorate. The two areas were then brought together into a single new Directorate, the Equality, Inclusion and Human Rights Directorate, in December 2020, at which point the Equality and Human Rights Division was divided into the Equality Division and the Human Rights Division. Both the Local Government and Communities Directorate and the Directorate for Equality, Inclusion and Human Rights fall within the remit of the

Director General Communities. Louise MacDonald has held that position since March 2023, having previously held the position of interim Director General Economy since May 2022.

2. All references within this statement to EIHRD should be understood to mean the fully-formed Directorate and/or the individual Divisions that were subsequently subsumed into the Directorate.
3. The Divisions that went on to form EIHRD had an established pre-pandemic role within the Scottish Government in providing policy advice in the general territory of equality and human rights to colleagues across Scottish Government. They did not have any defined function, role and responsibilities in relation to emergency response measures except insofar as being a recognised area of expertise on equality and human rights.
4. The Directorate is responsible for ensuring that the rights of those with protected characteristics under the Equality Act 2010 (namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) are embedded into Scottish Government policy making. This is done by engaging with stakeholders and those with lived experience to determine the strategic direction of Scottish Government policy for each protected characteristic, as well as the specific actions that would flow from that. EIHRD then works with Directorates across Scottish Government to deliver those actions.
5. In addition, the Public Sector Equality Duty requires each Scottish Government Director to consider the impacts of their policies on protected characteristics. Each Directorate should have regard to the needs of different people and groups in their policy making. This allows for differentiation and meeting the specific needs of diverse people and communities. To assist them to do so, the Scottish Government has systematically implemented a process of assessing the impacts on groups with protected characteristics which could result from significant changes to policies. This takes the form of conducting an Equalities Impact Assessment (EQIA) considering each group and how they may be affected, categorising these assessments and detailing any mitigations put in place to offset the potential impacts. Guidance is offered to policy teams on how they should proceed with developing their EQIA based on their individual policy requirements. Further explanation is provided in the “Equality Impact Assessments” section in paragraphs 52 to 57 below.

6. The Equality and Human Rights Division was responsible for developing policy, strategies and action plans to advance equality and eliminate discrimination for people with protected characteristics, for leading on human rights policy development, co-ordination of Scottish Government reporting against treaty obligations and engagement with international mechanisms and development of human rights legislation in line with the recommendations of the First Minister's Advisory Group on Human Rights Leadership. This Advisory Group was set up in 2017 by Scotland's then First Minister to make recommendations on how Scotland can continue to lead by example in the field of human rights. This includes economic, social, cultural and environmental rights. Recommendations were made in the report to the First Minister of 10 December 2018 entitled *Recommendations for a new human rights framework to improve people's lives*, provided: [LM2/001- INQ000182791].
7. The Equality and Human Rights Division established two major new funds during the pandemic period. The Equality and Human Rights Fund (EHRF) of £7 million opened in October 2021 (after a bidding period of February – May 2021) to support embedding and mainstreaming equality and human rights within policy and practice in Scotland in line with the ambitions of relevant Scottish Government strategies and the National Performance Framework. The Delivering Equally Safe (DES) Fund of £38 million was opened in October 2021 to provide funding for frontline services and prevention regarding Violence against Women and Girls. These funds were not created as a response to the pandemic, but they have funded organisations helping vulnerable groups that research has shown were particularly affected during the pandemic. The proposed launch of the DES fund was delayed in recognition of the fact that organisations were having to focus on their initial Covid-19 responses.
8. The Connected Communities Division was developing Hate Crime legislation and had specific responsibilities for taking forward asylum and refugee integration (in line with the New Scots Strategy). Whilst adjustments had to be made due to the impact of the pandemic, the Division also worked to ensure continuation of activity on PREVENT, a UK Government (UKG)-led, multi-agency programme that tackles radicalisation, to protect vulnerable individuals from being drawn into terrorism, and maintain engagement with religious leaders. The activity consisted of maintaining PREVENT case management process, development of the new PREVENT Multi-Agency Panel (PMAP) statutory guidance, priority stakeholder engagement and progressing management of TACT offenders workstream.

9. In addition, the Divisions now in EIHRD were working on the development of new legislation i.e. the aforementioned Hate Crime Bill (now Act) and the ongoing work to introduce a new Human Rights Bill that will incorporate four United Nations Human Rights treaties into Scots Law, including legislation that enhances human rights for women, disabled people and minority ethnic communities.
10. When it was formed in December 2020 the EIHRD was subdivided into three Divisions and two supporting units:
- Connected Communities Division led by Deputy Director, Robert Marshall
  - Equality Division jointly led in a job-share by Deputy Directors, Sean Stronach and Jess Dolan. In October 2021, Nick Bland replaced Sean Stronach and Jess Dolan as Deputy Director for the Equality Division
  - Human Rights Division led by interim Deputy Director, Elisabeth Campbell
  - Mainstreaming and Strategy Unit
  - Finance and Business Support Unit.
11. Prior to December 2020, the Divisions that later formed EIHRD were part of the Local Government and Communities Directorate, led at the time by Director, Stephen Gallagher. The Connected Communities Division was led at Deputy Director level by Robert Marshall and the Equality and Human Rights Division was led at Deputy Director level by Lisa Bird. Madhu Malhotra was the initial Director of EIHRD from December 2020 until she resigned with effect from 31 December 2021. Alison Byrne was appointed interim Director and took up the post from January 2022. The Minister with responsibility for equality, inclusion and human rights was Christina McKelvie who served as Minister for Equalities and Older People from June 2018 until March 2023. The Cabinet Secretary with overall responsibility for equalities matters was Shirley-Anne Somerville as Cabinet Secretary for Social Security and Older People from June 2018 until May 2021, and subsequently Shona Robison, Cabinet Secretary for Social Justice, Housing and Local Government from May 2021 until March 2023.
12. The Director holds overall responsibility for the Directorate and its remit to put equality, inclusion and human rights at the heart of public policy-making and public service delivery in Scotland. The role was established in December 2020 when the Directorate was formed.

13. The remit of the Deputy Director, Robert Marshall, Head of Connected Communities was to build inclusive, empowered, safe and resilient communities, which includes; faith and belief policy engagement, asylum seeker and refugee integration, Hate Crime policy and implementation of the Hate Crime and Public Order (Scotland) Act, improving support to people at risk of destitution due to no recourse to Public Funds, and safeguarding those vulnerable to radicalisation. During Covid-19, faith and belief stakeholder engagement was very much focused on informing the Scottish Government's policy decisions concerning places of worship.
14. The remit for the Deputy Directors for the Equality Division: Nick Bland (from October 2021), and Sean Stronach and Jess Dolan prior to that, was to advance the overall framework for equality in Scotland through the Public Sector Equality Duty and championing equality for vulnerable groups within groups of people with protected characteristics. Also, to provide support to the National Advisory Council on Women and Girls and oversee the Delivering Equally Safe funding.
15. The remit of the Deputy Director Elisabeth Campbell, Head of the Human Rights Division, was to develop new 'world-leading' human rights legislation for Scotland, following public consultation; engage with key stakeholders such as the Scottish Human Rights Commission (SHRC) and Equality and Human Rights Commission (EHRC) to help shape policy development and delivery; and engage with colleagues internally to ensure human rights are considered and reflected in Scottish Government policy development and service delivery.
16. The Directorate had a Mainstreaming Unit from Spring 2021, the remit of which was to build a whole-Directorate approach to mainstreaming equality, inclusion and human rights across the Scottish Government and wider public sector.
17. The structural changes to form the Directorate took place after the Covid-19 pandemic began but were not instigated as a result of the pandemic, nor specifically shaped to respond to it. However, like other Directorates, there was a review of the work undertaken across the Divisions and temporary changes were made within Divisions and workloads were re-prioritised to ensure appropriate support could be provided to the overall Scottish Government pandemic response, and to affected stakeholders, whilst continuing as much 'core business' as possible.

18. A small number of staff who worked in the divisions which later formed EIHRD were redeployed to Covid-19 coordination roles. In addition, the workload of Divisions changed because there was a greater requirement to provide advice reactively on proposed policies and legislation, and also – in the case of Connected Communities Division – to increase engagement with its faith and belief stakeholders.
19. This led to Connected Communities Division temporarily restructuring most staff into two teams – a stakeholder engagement team and an administrative support team – with remaining staff continuing work on the Hate Crime Bill and essential work on PREVENT (part of the CONTEST counter-terrorism strategy as described in paragraph 8 above). That arrangement was in place from around April 2020 to November 2021.
20. Similarly, the Equality and Human Rights Division identified key areas to focus its resources on. In order to do that, it increased the resource of its Mainstreaming team from March 2020 and ultimately established a Mainstreaming and Strategy Unit in Spring 2021. Key areas of focus included:
- safeguarding viability of (a) existing delivery commitments (primarily grants and funding arrangements) and (b) support for equality and human rights organisations
  - enabling delivery of urgent work to address Covid-19 – particularly around ‘at risk’ groups – including; support for older people, mainly through Age Scotland; increased support for Violence against Women and Girls services; tailored support for Gypsy/Traveller communities; and work to tackle social isolation and loneliness and access to support across disadvantaged communities
  - ensuring the Scottish Government response to Covid-19 addressed equality and human rights considerations, including; regular stakeholder engagement, enabling intelligence gathering and analysis of key impacts for equality groups; support to EQIAs across all areas of Scottish Government; helping tailor policy interventions across Health, Justice, Learning and Fair Work to address impacts on equality groups; coordinating responses to parliamentary scrutiny of equality in the Scottish Government’s Covid-19 response; identification and phased development work on key underpinning equality issues (e.g. labour market inequalities, inequalities in political representation, education inequalities); and input to the Social Renewal Advisory Board. The Board was set up in June 2020 by the Cabinet Secretary for Social Security and Older People and the Cabinet Secretary for Communities and Local Government and was made up of stakeholders from a range of different

interests, including equality and human rights. Louise Macdonald was a member of the Board whilst serving as Chief Executive Officer of Young Scot and Co-Chair of the First Minister's National Advisory Council on Women and Girls. In January 2021, the Board produced a final report for the Scottish Government, making 20 'calls to action' on Covid-19 recovery, which included recommendations relating to people, rights and advancing equality, provided: [LM2/002- INQ000182792].

21. EIHRD's areas of responsibility did not change in response to the pandemic i.e. it did not take on any new policy responsibilities to address Covid-19. It maintained responsibility for equality and human rights policy, ensuring equality and human rights considerations were incorporated into the policy development of other areas of Scottish Government, and continued to provide advice upon request to policy colleagues in the general territory of equality and human rights. It also maintained its role in engaging with and supporting faith and belief stakeholders. Other work such as increased funding to specific organisations such as Rape Crisis Scotland and support for refugees were variations of the ongoing 'core business' of the Directorate.
22. In the context of the pandemic, EIHRD's policy advice contributed to and informed the overall formulation of Scottish Government policy and supported decision-making by individual portfolio Ministers and, collectively, by the Scottish Cabinet. The advice it offered would have been considered in conjunction with policy advice from other relevant lead policy areas as well as legal advice provided by the Scottish Government Legal Directorate (SGLD).
23. Advice was also provided directly to Ministers on specific issues in the form of submissions with recommendations. This included submissions regarding; provision of Immediate Priorities Funding to particular organisations e.g. funding for Sikhs in Scotland, provided: [LM2/003 – INQ000182816], undertaking a marketing campaign to address under-reporting of Hate Crime, provided: [LM2/004 - INQ000182772] and changes to regulations concerning outdoor worship, provided: [LM2/005 - INQ000182771].
24. Furthermore, EIHRD scrutinised draft legislative provisions for Covid-19 for potential Equality and Human Rights impacts from March 2020. EIHRD submitted advice noting the potential implications of non-pharmaceutical interventions on the enjoyment of the Convention rights established by the Human Rights Act 1998 and the Scotland Act 1998 and in respect of groups with particular protected characteristics. The commentary and advice provided such as legal advice, were steps intended to ensure that the effects of

the legislation were fully compatible with the Convention rights and that particular groups were not disproportionately impacted by the legislative response to the pandemic.

25. EIHRD's contributions to advice for the First Minister and the Scottish Government concerned proposed policies and legislation (primarily Coronavirus (Scotland) Act 2020 and their alignment or consistency with Human Rights and ensuring that there was consideration of the different impacts on particular vulnerable groups within groups of people with protected characteristics. This was supported by the four harms process taken to providing advice to Ministers on measures to address the pandemic and also unintended consequences of these measures. For example, in considering Coronavirus (Scotland) Act 2020, EIHRD provided advice on taking account of the special circumstances of communities, such as Gypsy/Travellers, whose characteristics might result in a need for special provision. This resulted in subsequent interventions such as; provision of online learning and ongoing support for young Gypsy/Traveller learners; provision of Gypsy/Traveller health boxes; establishing a funded role in COSLA for Covid-19 support to Gypsy/Travellers; implementing a Gypsy/Traveller financial resilience project; Gypsy/Traveller counselling support services; provision of support for isolated Gypsy/Travellers; and provision of sanitation facilities for Gypsy/Travellers.
26. Input from the Division resulted in the inclusion in that Act of the section 9 duty placed on the Scottish Ministers in relation to the advancement of Equality and Non-Discrimination provided: [LM2/006 - INQ000182814], which was subsequently extended by the Coronavirus (Scotland) (No.2) Act 2020, provided: [LM2/007 - INQ000182817]. The considerations that were made were subsequently formalised into a full published Equality Impact Assessment, provided: [LM2/008 - INQ000182766].
27. Two bodies within Scotland with whom EIHRD liaised during the pandemic period were the Scottish Human Rights Commission and the Equality and Human Rights Commission in their capacities as National Human Rights Institutions, and (in the case of the EHRC) in its role as the equality regulator for Scotland. EIHRD also sought to facilitate effective wider engagement between the Commissions and the Scottish Government. Both Commissions were active in commenting on the equality and human rights implications of measures taken in response to the pandemic, including through the publication of statements, advice and reports and by giving evidence to the Scottish Parliament. An important feature of the Division's pandemic-focused activity included



seeking to ensure that commentary from the two Commissions was taken into account in advice that supported the formulation of policy and ministerial decision-making.

28. No new groups or committees were set up within EIHRD for the purpose of responding to the pandemic but there was enhanced engagement activity by the Connected Communities Division and faith and belief stakeholders due to the changing impacts of lockdown restrictions on places of worship. A faith and belief stakeholder network of around 17 stakeholders which included church leaders and community groups representing a variety of faiths and beliefs was established and met weekly. The network was focused specifically on Covid-19 impacts on faith groups/communities. Professor Jason Leitch, Scotland's National Clinical Director, engaged with this group regularly offering an opportunity to be informed about the latest science and guidance and to take questions.
29. In addition, the Expert Reference Group on Covid-19 and Ethnicity was established and first met on 10 June 2020 in response to the growing evidence of the disproportionate impact of the Covid-19 pandemic on minority ethnic people. Terms of reference and membership are provided: [LM2/009 - INQ000182818].
30. Further detail on the work and recommendations made by the group is set out at paragraphs 74 to 76 below.
31. EIHRD did not have any advisory functions towards significant organisations in Scotland, such as Public Health Scotland, the health boards and authorities, NHS trusts, local authorities, primary care services, independent sector care providers or other major public authorities or sectors.
32. Overall, EIHRD provided a centre of knowledge and expertise on equality and human rights issues for Scottish Government and this worked well, enabling advice to be fed into decision-making processes, for policy officials across Scottish Government to seek guidance as they were developing new proposals and for advice to be fed into the four harms process which was embedded in Scottish Government's Strategic Framework to addressing Covid-19. Ideally, however, that knowledge and expertise would be embedded within the policy areas themselves. The EIHRD is currently undergoing a redesign that will give a greater impetus to the Director's mainstreaming agenda to move Scottish Government towards that position.

## **The Role of EIHRD in core political and administrative decision-making by the Scottish Government**

33. As set out above, EIHRD (and its predecessor Divisions) had an established pre-pandemic role within the Scottish Government in providing policy advice in the general territory of equality and human rights.
34. In the context of the pandemic, policy advice on Equality and Human Rights, with particular regard to differential impacts on groups with protected characteristics, contributed to and informed the overall formulation of SG policy and supported decision-making by individual portfolio Ministers and, collectively, by the Scottish Cabinet.
35. EIHRD officials were in attendance at the Communities and Public Services Ministerial Group (CPSMG) that was established on 2 April 2020. The meetings initially took place twice a week initially, becoming weekly by July and fortnightly in October. The CPSMG was led by the Deputy First Minister and attended by all education, communities and justice ministers, along with Directors-General and Directors from those areas. In addition, the Chief Social Policy Advisor, Chief Social Researcher, Chief Scientific Advisor, Director-General Exchequer and communications officials were also invited.
36. This was a key forum to enable a co-ordinated and collaborative approach to social issues relating to the pandemic, particularly in relation to Harm 3. This included discussions on policy approaches in relation to services within the relevant ministerial portfolios such as student hardship, prison release, etc. It was also used to look at evidence on how Covid-19 impacts were being experienced differently across different groups such as black and minority ethnic people. In addition, EIHRD provided updates to the group on how equality and human rights approaches were being ‘mainstreamed’ across Scottish Government i.e. that equality impacts were considered by Directorates across Scottish Government during policy development and prior to implementation.
37. Inequalities also featured in the weekly briefings provided to Ministers as part of the four harms process in weekly Cabinet papers and in the four harms evidence papers which were also published. Scottish Government’s four harms approach is set out in further detail in the M2ASG01 DG Strategy and External Affairs statement submitted to the Inquiry in draft on 23 June 2023, specifically in the section entitled “Scottish Government’s overall approach to using NPIs”. The section entitled “The process of decision making” sets out how the Four Harms Group existed to enable the development

of well-rounded material to support Ministerial decision making at Cabinet as well as setting out the development process for Cabinet papers.

38. Due to the pace of activity, requests for advice came from policy teams through a mixture of emails and use of Skype/Teams messaging on an ad hoc, but frequent – often daily – basis. Whilst much of the engagement was through the Mainstreaming team, other queries were raised directly with equality policy teams using their known contacts or looking up responsibilities on the staff directory.
39. EIHRD also scrutinised draft legislative provisions for what would become the Coronavirus (Scotland) Act 2020 for potential equality and human rights impacts in March 2020, aiming to ensure that the effects of the legislation were fully compatible with the Convention rights and that particular groups were not disproportionately affected by the legislative response to the pandemic. EIHRD also engaged with colleagues on the Coronavirus (Scotland) (No.2) Act 2020 and Coronavirus (Extension and Expiry) (Scotland) Act 2021 – the Equality Impact Assessments for these key pieces of covid legislation have been published on the gov.scot website. EIHRD was also engaged as legislation was further amended and updated subsequently, for example, providing input that led to the exemption in regulations from mandatory face coverings for individuals leading acts of worship.
40. EIHRD’s advice on equality and human rights recognised the potential for groups with protected characteristics as set out in the Equality Act 2010 to be adversely and disproportionately impacted and the need for potentially vulnerable groups to be considered when making policy decisions on non-pharmaceutical interventions. The impacts on different groups were summarised in papers prepared by the Communities Analysis Division and published in June 2020, provided: [LM2/010 - INQ000182793 LM2/011 - INQ000182794 LM2/012 - INQ000182796, LM2/013 - INQ000182797 LM2/014 - INQ000182798, LM2/015 - INQ000182773, LM2/016 - INQ000182780, LM2/017 - NQ000182782 LM2/018 - INQ000182783]. This collection of papers supplemented the equality and human rights considerations routinely included in four harms papers and Cabinet papers, previously provided to the Inquiry. Within those protected characteristic groups, EIHRD differentiated smaller elements e.g. not all disabled people would be affected by communications that were not inclusive in the same way that deaf/blind people would be. Similarly, Gypsy/Travellers’ accommodation arrangements placed them in a different position to other racial groups. EIHRD advice based on the working knowledge of officials about groups falling within their policy

remits. The officials tailored their advice according to the specific policy or legislative proposal and its potential to impact on very specific groups.

41. There was, of course, a very clear recognition of how policies would affect two specific vulnerable groups i.e. older people and disabled people with existing health conditions. Considerations of policy impacts on those groups were a significant part of thinking about Harm 1 of the four harms approach (including direct health impacts on individuals) when making decisions on measures to prevent or reduce transmission in the community and thereby reduce risk to those vulnerable groups.
42. A range of officials from EIHRD attended two sets of meetings where effects on at risk or vulnerable groups (including subsets of groups with protected characteristics) were considered:
  - regular meetings convened by colleagues in Constitution and External Affairs who were co-ordinating work on restrictions and public guidance
  - Four Harms forum chaired by DG Constitution and External Affairs.
43. The EIHRD officials present at those meetings were not the lead officials on policy development. They were present in order to be aware of developing proposals and be able to comment on issues raised by the policy leads and/or to seek further engagement in more detail outside of the meetings.
44. In general, an official (below SCS level) represented the Director at the weekly four harms meeting but this was supplemented by other officials (sometimes Robert Marshall, Deputy Director) when issues affecting places of worship were to be discussed.
45. EIHRD officials did not participate directly in any formal bilateral, trilateral or four nations discussions with counterparts in the devolved administrations nor provide information in relation to key decision-making. Advice originating from EIHRD may have been reflected in briefings, information or policy proposals used by more senior officials and/or Ministers in their engagement with other devolved administrations and the UK Government.
46. There was informal and ad hoc engagement between EIHRD officials and officials in devolved administrations and with Department for Housing and Levelling Up officials in the UK Government concerning policies affecting places of worship. There was no set pattern or quorum for these meetings, which tended to occur in the run up to the

introduction of changes to restrictions. There were no official records kept of these conversations.

47. Generally, EIHRD officials would ensure that concerns raised on behalf of at-risk and vulnerable groups were fed into advice that supported decision-making on new policies and legislation. For example, concerns were raised by the Scottish Parliament's Equality and Human Rights Committee during its Covid Inquiry in 2020. The concerns were raised in letters of 4 June 2020 and 7 July 2020 which were responded to by Christina McKelvie, Minister for Equalities and Older People, on 23 June and 16 July 2020, provided: [LM2/020 INQ000182813] and [LM2/021- INQ000182815]. The responses set out the Scottish Government position on the concerns raised, actions taken and commitments regarding future policy development in relation to; Coronavirus Act 2020 - Schedule 9 provisions: "trigger point", accessibility and support for testing, Anticipatory Care Plans, Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) forms, admission to hospital, CMO clinical guidance, housing and refuge for victims of domestic abuse.
48. In addition, Connected Communities Division brought the views and concerns raised by faith and belief stakeholders to Covid Co-ordination meetings to inform decision-making on restrictions affecting places of worship. The Division was represented at four harms meetings, as noted above, and introduced faith and belief stakeholder views into those discussions. The Division tracked live concerns and queries raised. These concerned, for example; when places of worship could be reopened, key worker status and childcare provision for community faith leaders, access to Covid-19 testing for community faith leaders, PPE provision for handling the deceased, financial assistance for places of worship, higher proportion BAME details, and commemoration events (e.g. days of prayer).
49. Section 4 "Summary of the Impact of Covid-19 on Protected Characteristics and Socio-Economic Advantage" within the evidence gathered for Scotland's route map – equality and fairer Scotland impact assessment, provided: [LM2/022 – INQ000182723] sets out the Scottish Government's considerations of the range of impacts from Covid-19 across different protected characteristic groups. A second Equality and Fairer Scotland Impact Assessment was published for phase three measures, provided: [LM2/023 – INQ000182799]. Information on the impacts of Covid-19 on different groups was made available to officials across Scottish Government in slide packs and as evidence reviews so that they could consider this as they developed policies and produced equality impact

assessments. Further information on the slide packs and evidence reviews is provided in the Data and Information Handling section in paragraphs 62 to 67 below.

### Public Communications

50. EIHRD was involved in the provision of guidance within public communications. The Directorate developed guidance, working in consultation with Covid Coordination and SGLD as necessary, on the safe reopening of places of worship, provided: [LM2/024 – INQ000182800] The guidance was initially published in June 2020 and subsequently refreshed and amended as circumstances developed.
51. The regular meetings and strong relationships with faith and belief stakeholders were a helpful forum in which to discuss with religious leaders the appropriateness of restrictions affecting worship. Moreover, stakeholders were well-placed to support efforts to address vaccine resistance in some parts of their communities and thereby help improve the overall public health outcomes. As noted above, Scotland's National Clinical Director, engaged with this group regularly.
52. EIHRD officials worked jointly with Marketing and Insight colleagues on a proposal for a marketing campaign regarding the reporting of Hate Crime. This was not directly related to Covid-19 compliance but rather to address changes in behaviour caused by Covid-19 i.e. reporting of Hate Crime dropped, possibly due to people not wanting to overburden Police Scotland during the pandemic. The campaign aimed to provide reassurance for victims of Hate Crime that both the Scottish Government and Police Scotland continued to take it seriously and raise awareness of how victims and witnesses can report.
53. The Annex to Ms McKelvie's letter of 23 June 2020 to the Scottish Parliament's Equality and Human Rights Committee, provided: [LM2/041 - INQ000182819] (on which EIHRD officials contributed advice, also sets out how the Scottish Government was developing 'inclusive communications' to ensure guidance was accessible to everyone, including older people (who often do not use the internet) and deaf/blind people. Inclusive communication addresses the needs of people of all ages, people from different cultural and language backgrounds, and disabled people, so that they can; gain full access to services, understand what service providers are telling them so that the advice, guidance and information provided by the services makes sense to them; be understood by services providers so that service providers provide better quality, more effective services first time; have a more positive experience of services and be less likely to

challenge service providers; and, maintain the motivation to take up and stick with services that make positive changes to their lives.

54. Wider Scottish Government work to amplify campaign messages and communicate effectively to the whole of Scotland, encompassing all geographies and minority communities, was outlined in the M2ASG01 DG Corporate Statement provided to the Inquiry in draft on 23 June 2023. As advised in that Statement, the Strategy and Insight team worked closely with NHS 24, Public Health Scotland and third sector partners to ensure key public health information on Covid-19 was available in multiple languages and accessible formats via the NHS Inform website. The Strategy and Insight and Partnerships teams co-created materials specific to Minority Ethnic communities. For example, the Communications team worked with the Scottish Public Health Network (“ScotPHN”) to create a bespoke, printed easy read version of the Test and Protect information specifically for the Gypsy/Traveller community, previously provided: [LF2/014 - INQ000182798] This was distributed by COSLA to Gypsy/Traveller sites.

#### Equality Impact Assessments

55. As per its established pre-pandemic responsibilities, EIHRD continued to assist Directorates across Scottish Government to comply with their Public Sector Equality Duty, including carrying out Equality Impact Assessments. Guidance was made available on Scottish Government’s intranet, Saltire, which is accessible to all Scottish Government core employees. The guidance is provided: [LM2/025 – INQ000182820]. The guidance advises that all EQIAs should be published. 57 published EQIAs related to Covid-19 are provided in the annex at the end of this statement [Annex A]. The Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville, wrote to all Cabinet Secretaries, Ministers and Director-Generals to seek their commitment to ensuring that equality and human rights continue to be embedded in the collective government response to Covid-19. A short video, “Mountains for All”, had also been developed and published to all staff in January 2020 to set out in simple terms why Equality and Human Rights considerations should be part of early policy development thinking, provided: [LM2/039 – INQ000182811].

56. In addition, EIHRD officials, along with SGoRR colleagues, also held ‘improvement workshops’ with key colleagues from Health Directorates. Four sets of workshops were held beginning in July 2020 with selected Health officials. The sessions were designed to assist policy teams in collecting equality information relevant to their policy area and hence facilitate the drafting of the evidence gathering section of the EQIA, and to help

them explore how this evidence should drive the development of their policy and how this could be recorded in their EQIA. The workshops resulted in wider application of an equalities perspective, with further EQIAs developed following this engagement.

57. An example of an EQIA prepared with EIHRD advice and assistance is the EQIA for the Covid Vaccination Certification Scheme, provided: [LM2/026 – INQ000182712].

58. EIHRD also provided advice and assistance to other policy areas to assist in the preparation of the Equality impact assessment for the Coronavirus (Scotland) Bill, provided: [LM2/027 – INQ000182765] as well as other Bills.

59. Due to the pace of operation required to deliver the legislation and the associated EQIAs, advice was provided often in brief emails and Skype/Teams calls and messages. EIHRD officials then reviewed the impact assessment as it was developed to ensure it was balanced and accurate.

60. In summary, as outlined in the M2ASG01 DG Strategy and External Affairs Statement submitted in draft on 23 June 2023, over the course of the pandemic, decision-making was supported by various types of impact assessment including Business Regulatory (BRIA); Equality & Fairer Scotland (EQFSIA); Children's Rights and Wellbeing (CRWIA) and Island impact assessments, where appropriate. Due to the fast-moving nature of the public health emergency, the rapid pace of decision-making meant that formal impact assessments could not always be undertaken in advance of decision-making; however, processes such as the four harms assessments enabled impacts (for example, on groups with protected characteristics) to be discussed in relation to each of the harms. The Scottish Government published impact assessments at various stages of the pandemic which provide insights into the relevant considerations for decision-making.



## Data and information handling

61. Research, analysis and reporting on Covid-19 disparities was undertaken by the Communities Analysis Division (CAD). CAD carried out equalities focused analysis primarily using secondary analysis and literature reviews and published a collection of equality evidence documents in the summer of 2020, previously provided in this statement: [LM2/010 – INQ000182793, LM2/011 – INQ000182794 LM2/012 – INQ000182796, LM2/013 – INQ000182797, LM2/014 – INQ000182798, LM2/015 - INQ000182773, LM2/016 - INQ000182780 LM2/017 - INQ000182782 LM2/018 - INQ000182783]. The slide packs included in this collection were collated by CAD using data already in the public domain across four protected characteristics; age, disability, ethnicity and gender. They were designed to highlight structural inequalities by presenting high level equality analysis across a range of policy areas. The analysis highlighted some areas where equality groups experienced worse outcomes, and the resource was designed to inform policy making around potential impacts of Covid-19. The slide packs were shared with EIHRD and analytical policy officials ahead of publication.
62. A news item was published on the Scottish Government's internal intranet Saltire on 21 [LM19-INQ000000] July 2020 to highlight the relevant information and resources available, such as data and analysis set out in the Equality Evidence Finder online dashboard and in the aforementioned slide packs and evidence reviews. The Equality team itself was signposted, as was an equality self-reflection toolkit, provided: [LM2/028 – INQ000182801
63. Within CAD a number of different models were used to analyse the impact of the Covid-19 epidemic in Scotland. The only protected characteristic employed in these various models was age. Within these various models, age was used as an input to allow different assumptions to be applied for different age groups to improve the quality of the modelling forecast. Data modelling specifically looking at the impact of Covid-19 on different age groups was not routinely modelled within CAD, rather, the modelling focused on the total impact across Scotland.
64. Specifically, the Scottish Contact Survey analysis routinely reported on and provided contact pattern information broken down into different age groups. This was disseminated as part of the Scottish Government's regular Coronavirus (COVID-19):

modelling the epidemic publication. Copies of the modelling reports were shared with the Inquiry on 8 December 2022 as part of Tranche 1 of the Scottish Inquiry.

65. With regards to at risk and vulnerable groups, only the medium-term projections (MTP) model included these groups as part of the assumptions for the modelling. This model had the functionality to split assumptions such as hospitalisation rate, ICU rate, death rate, and length of stay by:

- age band
- care status (In care or not)
- immune compromised status (Immune compromised or not)
- Scottish Index of Multiple Deprivation (SIMD).

66. Data modelling specifically looking at the impact of Covid-19 on these groups was not routinely modelled, but the input assumptions for these groups was regularly reviewed and updated where appropriate.

#### Committee Appearances

67. The engagement of EIHRD officials with colleagues across Scottish Government ensured that other officials attending Committees had an understanding of equalities concerns and potential impacts on vulnerable groups. There were EIHRD officials in attendance at the meeting of the Scottish Parliament's Equalities and Human Rights Committee on 18 March 2021, providing an update on Scottish Government Human Rights obligations, at which the Cabinet Secretary for Social Justice, Housing and Local Government referred to the unequal impacts of the pandemic across society, including disproportionate impacts on minority ethnic groups and disabled people. The agenda and minute of the Committee are provided: [LM2/029 – INQ000182788] and [LM2/030 – INQ000182789].

#### Future risks, reviews, reports and lessons learned exercises

68. Briefing prepared for the then incoming new Minister Shona Robison, Cabinet Secretary for Social Justice, Housing and Local Government, in May 2021, included analysis of the lessons learned from experiencing the Pandemic in EIHRD which have been summarised below:

- equality, inclusion and human rights need to be fundamentally positioned as essential parts of effective policy making and delivering for the people of Scotland
- understanding is key, based both on a much improved ability to gather, analyse and use evidence and data and on an improved approach to engagement with lived experience that recognises people as experts in their own lives
- clear and consistent leadership is essential
- everyone needs to see their stake and to be engaged in co-creating inclusive policies and their implementation – in particular meaningful and active participation with those that are most impacted by issues
- challenges around tackling and acting upon systematic deep rooted inequalities are best served through a systemic response rooted in collective action and collaboration
- all organisations must be prepared to put in place the resources to underpin this work in a holistic way.

69. In addition, the level of engagement with faith and belief stakeholders during the pandemic has informed EIHRD thinking about ongoing engagement. A new Faith and Belief Engagement Strategy has been developed and will be published shortly.

70. In March 2021 the regulations that closed places of worship were subject to judicial review. The opinion of Lord Braid on 24 March recognised that the decision to close places of worship in January 2021 was rational and pursued a legitimate aim. However, the Judge concluded that there was insufficient evidence presented that Ministers had given sufficient importance to Article 9 rights. This led to an informal review of how Scottish Government evidenced the consideration given to fundamental and human rights as part of the advice given to Ministers. Up to that point the advice to Ministers included a summary of the considerations in the form of an assurance of proportionality and legal considerations rather than a full record of any analysis that had been carried out.

71. Following the informal review, future advice on changes to protective measures included an annex which included more detailed consideration of how each measure may interfere with the rights of individuals or businesses as well as an assessment of proportionality. This change made considerations upfront, clear and explicit in the advice to Ministers in order to provide greater assurance and transparency around the process.

72. Given the pace that was being worked at, there were some decisions taken that with hindsight could have been handled differently, such as the decision in June 2020 to

reopen hospitality venues for indoor use (e.g. pubs) on 15 July, eight days prior to a further review which would have included determining whether congregational worship could resume in places of worship. The decision was changed subsequently so that places of worship would also open on 15 July, subject to physical distancing, caps on attendance and other health related measures. Fortunately, the investment in relationships with faith and belief stakeholders ensured that the change in position was handled smoothly and concerns addressed.

73. As well as lessons learned internally, the Scottish Government received a number of recommendations from the Expert Reference Group (ERG) on Ethnicity and Covid-19. The ERG was established “to ensure that we have an accurate understanding of the impact of Covid-19 on minority ethnic and migrant communities in Scotland, and that our policy responses reflect this. There is a need to work on improving existing systems and processes, and analysing what we know, while at the same time looking more fundamentally at how the system itself needs to change.” The group was asked to provide advice and recommendations by the Scottish Government in relation to data, evidence, risk and systemic issues. The group did so in two reports, provided: [LM2/031 – INQ000182802] and [LM2/032 – INQ000182803].
74. Ms McKelvie, Minister for Equalities and Older People, provided an initial government response to the ERG recommendations on 3 November 2020, provided: [LM2/033 – INQ000182804].
75. One of the recommendations that was accepted was that the Scottish Government should establish: “An Observatory which brings together quantitative and qualitative data on ethnic and racial inequalities in Scotland. This should not only include epidemiological data but also cultural, historical and other socio political and economic factors.” EIHRD is planning a phased introduction of the Anti-Racism Observatory for Scotland beginning in 2023.
76. In terms of preparedness for future pandemic or public health crisis, EIHRD is currently undergoing a redesign and restructure. One of the key drivers is a mainstreaming agenda i.e. the intention to accelerate the pace of capacity and capability building across Scottish Government and the wider public sector in relation to rights, obligations and duties. This needs to be done in the context of the Public Sector Equality Duty review and the mainstreaming strategy, as well as recommendations from various strategies led by key stakeholders requiring cross-Government action, including the First Minister’s

National Advisory Council on Women and Girls and the Interim Governance Group to develop anti-racist infrastructure. Building capability and capacity within Scottish Government will help put equality and human rights at the heart of policy-making and service design and ensure that responses to future public health crises will be developed with a greater awareness of the need to consider equality impacts and more informed thinking on how to address and prevent potential inequalities.

77. The Equality Evidence Strategy, published by the Scottish Government on 24 March 2023, provided: LM2/034 – INQ000182805, with supporting annexes: LM2/035 – INQ000182806, LM2/036 – INQ000182807 - LM2/037- INQ000182808, LM2/038 – INQ000182809, and LM2/042- INQ000182810 outlines Scottish Government's plan to improve and strengthen Scotland's equality evidence base over a three year period to the end of 2025. The strategy aims to deliver better equality evidence that will, in turn, enable policymakers to develop sound and inclusive policies to improve service delivery and improve outcomes across Scotland.

#### **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.

Signed:

**Personal Data**

**Dated:** 23/6/2023

**ANNEX A – PUBLISHED EQUALITY IMPACT ASSESSMENTS RELATED TO COVID-19**

<b>Exhibit Reference number</b>	<b>Document Title / Topic</b>	<b>Type of impact assessment</b>
LM2/011 - INQ000182794	Equality and fairer Scotland Duty Assessment of the Health and Social Impacts of Covid 19	EQFSIA
LM2/043 - INQ000182711	Coronavirus (Covid-19) Domestic Covid Status Certification	EQIA
LM2/044 - INQ000182713	Results Coronavirus (Covid-19): manufacturing sector guidance	EQIA
LM2/045 - INQ000182714	Scottish Public Sector Pay Policy 2021 to 2022	EQIA
LM2/046 - INQ000182715	Prolonged home working for Scottish Government staff and new safe and secure workplace arrangement in response to Covid-19	EQIA
LM2/047 - INQ000182716	Vaccination Programme Autumn/Winter 2021-2022 Flu and Covid-19	EQIA
LM2/048 - INQ000182717	Travel Regulations EQFSIA	EQFSIA
LM2/049 - INQ000182718	Dementia And Covid-19 National Action Plan to Continue To Support Recovery For People With Dementia And Their Carers	EQIA
LM2/050 - INQ000182719	Results: Covid-19 Events Sector Guidance	EQFSIA
LM2/051 - INQ000182720	Evidence gathered for Test and Protect - Scotland's Approach to Preventing the Spread of Coronavirus in the Community	EQFSIA
LM2/052 - INQ000182720	Coronavirus (Covid-19) Replacement of National Qualifications Exams in 2021 Session with an Alternative Certification Model	EQFSIA
LM2/053 - INQ000182722	Record Making Scotland's Future: A recovery Plan For Manufacturing (December 2020)	EQFSIA
LM2/054 - INQ000182724	Near Me Video Consulting Programme	EQIA
LM2/055 - INQ000182725	Local Development Planning Regulations and Guidance Consultation part D	EQIA
LM2/056 - INQ000182726	Amendment to the Civil Contingencies Act 2004 to include Integration joint Boards as category 1 responders	EQIA

<b>Exhibit Reference number</b>	<b>Document Title / Topic</b>	<b>Type of impact assessment</b>
LM2/057 - INQ000182727	Best Start, Bright Futures Tackling Child Poverty Delivery Plan 2022-2026 Annex 7: Equality Impact Assessment	EQIA
LM2/058 - INQ000182728	Coronavirus Covid-19 shielding social care workers support scheme	EQIA
LM2/059 - INQ000182729	Coronavirus (Extension and Expiry) (Scotland) Bill	EQIA
LM2/060 - INQ000182730	Coronavirus (Recovery and Reform) (Scotland) Bill	EQIA
LM2/061 - INQ000182731	Covid-19 sectoral guidance construction	EQIA
LM2/062 - INQ000182732	Dementia Covid-19 national action plan continue support recovery people dementia carers summary	EQIA
LM2/063 - INQ000182733	Developing the Young Workforce (DYW) School Coordinators	EQIA
LM2/064 - INQ000182738	Digital Government (Scottish Bodies) Regulations 2022	EQIA
LM2/065 - INQ000182735	Disability Assistance Working Age People (Scotland) Regulations 2022	EQIA
LM2/066 - INQ000182736	Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021	EQIA
LM2/067 - INQ000182737	Expansion of Early Learning and Childcare - Reinstatement of 1140 statutory duty	EQIA
LM2/068 - INQ000182738	Gypsy-traveller-accommodation-fund-site-design-guide	EQIA
LM2/069 - INQ000182739	Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2022 and The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2022	EQIA
LM2/070 - INQ000182740	Routine protective measures in schools, early learning and childcare (ELC) settings and daycare of children's services	EQIA
LM2/071 - INQ000182741	Clinical Guidance and Ethical Advice and Support	EQIA

<b>Exhibit Reference number</b>	<b>Document Title / Topic</b>	<b>Type of impact assessment</b>
LM2/072 - INQ000182742	Lantra Skills Matching Service	EQIA
LM2/073 - INQ000182743	Near video consulting programme national	EQIA
LM2/074 - INQ000182745	Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2022	EQIA
LM2/075 - INQ000182746	The provision of early learning and childcare during the Covid-19 pandemic	EQIA
LM2/076 - INQ000182747	Public Sector Pay Policy 2022-23	EQIA
LM2/077 - INQ000182748	Recovery redesign action plan cancer services	EQIA
LM2/078 - INQ000182749	Redesign urgent care equality impact assessment	EQIA
LM2/079 - INQ000182750	Regulations 11 - 8 Jan publication regulations	EQIA
LM2/080 - INQ000182751	School reopening arrangements january	EQIA
LM2/081 - INQ000182752	Scottish attainment challenge 2018-2022	EQIA
LM2/082 - INQ000182753	Scottish attainment challenge 2022-2023 2025-2026	EQIA
LM2/083 - INQ000182754	Scottish child payment	EQIA
LM2/084 - INQ000182755	Scottish general election coronavirus bill	EQIA
LM2/085 - INQ000182756	Self isolation support grant	EQIA
LM2/086 - INQ000182757	STEM Bursary 2021	EQIA
LM2/087 - INQ000182758	Initial Impact Assessment on the Strategic Framework for Reopening Schools and Early Learning and Childcare Settings in Scotland	EQIA
LM2/088 - INQ000182759	Vaccination programme autumn winter 2021-2022 flu covid-19	EQIA
LM2/089 - INQ000182760	Young Persons Guarantee activity plan phase 1	EQIA
LM2/090 - INQ000182761	Summer offer children young people summer	EQIA
LM2/091 - INQ000182762	Teacher lecturer estimates	EQIA
LM2/092 - INQ000182763	The closure and reopening of schools as part of the Covid-19 recovery process in Scotland	EQIA



<b>Exhibit Reference number</b>	<b>Document Title / Topic</b>	<b>Type of impact assessment</b>
LM2/093 - INQ000182764	The closure and reopening of schools as part of the Covid-19 recovery process in Scotland (Update)	EQIA
LM2/094 - INQ000182767	The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020	EQIA
LM2/095 - INQ000182768	Phased resumption eye care services provided community optometry covid-19 recovery response	EQIA
LM2/096 - INQ000182769	Re-opening childcare part covid-19 recovery process scotland	EQIA
LM2/097 - INQ000182770	Coronavirus (Covid-19) reducing risks in schools guidance for back to school arrangements	EQIA
LM2/100 - INQ000182744	Non-Domestic Rates (Coronavirus) (Scotland) Bill	EQIA

EQFSIA – Equality & Fairer Scotland Impact Assessment

EQIA – Equalities Impact Assessment