

Witness Name: Ken Thomson
Statement No.: 2
Exhibits: KT2
Dated: 22 June 2023

UK COVID-19 INQUIRY
MODULE 2/2A

**WITNESS STATEMENT OF THE DIRECTOR GENERAL STRATEGY AND EXTERNAL
AFFAIRS**

This statement is one of a suite provided for Module 2 and 2A of the UK Covid-19 Inquiry and these should be considered collectively. In relation to the issues raised by the Rule 9 notices dated 2 February 2023 and served on the Scottish Government, in connection with Module 2 and 2A, the Director-General Strategy and External Affairs will say as follows: -

Devolution

1. Devolution in Scotland has its basis in the Scotland Act 1998 ('the 1998 Act'), as amended, most extensively by the Scotland Acts 2012 and 2016. Prior to the establishment of the Scottish Parliament in 1999 under the 1998 Act, the Scottish Office oversaw many public services in Scotland as part of the UK Government, with policy responsibilities such as health and local government.
2. Devolution was intended to allow the people of Scotland to choose political representatives and leadership that reflected their views and priorities.
3. The 1998 Act followed a referendum on devolution in 1979. The 1998 Act established the Scottish Parliament and Scottish Executive (which has since been renamed the Scottish Government) and defines their powers. Scottish devolution is based on a "retained powers" model of devolution in which – broadly – the power to make legislation about matters not "reserved" in the 1998 Act is "devolved" to the Scottish Parliament. As a result, the Scottish Parliament has the powers to make primary legislation – Acts of the Scottish Parliament – on a

range of matters commonly called “devolved matters”. The UK Internal Market Act 2020 also increased the powers of UK Ministers to undertake expenditure in devolved areas.

4. The table below has illustrative lists of reserved and devolved matters:

Devolved matters	Reserved matters
Agriculture, forestry and fisheries	Broadcasting
Education and training	Aspects of the Constitution
Environment	Defence and national security
Health, care and social services	Immigration
Housing and land use planning	Energy
Law and order	Employment
Local government	Equal Opportunities
Sports, arts and tourism	Foreign affairs and international relations
Parts of social security	Macroeconomic and fiscal policy
Some forms of taxation	Pensions, and parts of social security
Many aspects of transport	Trade, including international trade

5. Scottish Government Ministers have executive powers, including to make secondary legislation (such as regulations and orders), and responsibilities for which they are accountable to the Scottish Parliament. Those are in areas where legislative competence is devolved to the Scottish Parliament and a range of “executively devolved” powers and duties in relation to matters (for example many aspects of transport) for which the competence to make primary legislation is reserved. Section 53 of the 1998 Act removed most UK Ministerial powers and duties, so far as they were exercisable in relation to devolved matters, and transferred them to the Scottish Ministers. Under section 56 of the Act, UK ministers retained a limited number of powers (such as to provide financial assistance to industry) in devolved areas that are exercisable by them as well as the Scottish Ministers. Section 35 specifically relates to the power of UK ministers to block a Scottish bill in certain circumstances, with section 58 the equivalent of section 35 but exercisable in relation to ministerial actions and secondary legislation rather than Scottish bills. Section 68 includes minor powers for UK ministers to provide financial assistance to industry if required.
6. There are also, of course, many areas where the devolved responsibilities of the Scottish Government and Parliament interact with those of the other governments, and many reserved

areas where UK Government policies or Westminster legislation have impacts on devolved matters.

7. Accountability is worth emphasising. The Scottish Ministers are accountable to the Scottish Parliament rather than to the UK Ministers or the UK Parliament. Successive UK Governments have retained a Cabinet post of Secretary of State for Scotland (sometimes combined with other roles), but that post-holder does not have any supervisory role for devolved government except for some powers of intervention in certain limited circumstances, unlike Northern Ireland where there is a tri-fold subdivision of matters (transferred, reserved and excepted). In the definition of the Scottish Parliament's legislative competence in the 1998 Act, there is no concept of a "shared" matter, there are simply reserved matters and there is everything else.
8. Section 28(7) of the 1998 Act asserts the UK Parliament's continued ability to legislate even on devolved matters in Scotland.
9. During the UK parliamentary passage of the 1998 Act Lord Sewel, on behalf of the UK Government, set out what has become known as the "Sewel Convention" that the UK Parliament would not normally legislate about devolved matters without the consent of the Scottish Parliament. A reference to the Convention (recognising its existence) was inserted into the 1998 Act by the Scotland Act 2016.
10. There is an established procedure for seeking the legislative consent of the Scottish Parliament under the Sewel Convention for Westminster to legislate about a devolved matter or to change the powers or duties of the Scottish Parliament or Ministers, where the Scottish and UK Governments agree that such legislation should be proposed. The Scottish Government puts a Legislative Consent Memorandum to the Parliament that recommends whether or not the Parliament should agree to the request. If it does agree, it would pass a Legislative Consent Motion. That process was followed for the UK Coronavirus Act 2020, which received Royal Assent in March that year and contained provisions about devolved matters in Scotland including health and social work services, medical certification of deaths, and powers for the Scottish Minister to make regulations that were used during the pandemic to put in place 'lockdown' and other restrictions. The legislation was developed collaboratively between the Scottish and UK Governments and the Scottish Government then sought and secured legislative consent for the bill from the Scottish Parliament [KT2/001 – INQ000131052].
11. Starting in 2018 there has been a series of instances where the UK Government has proceeded to secure the passage of Bills about devolved matters or changing the competence of the

Scottish Parliament and/or Ministers despite legislative consent having been refused. None of those were in the context of the Covid-19 pandemic.

12. There have been changes to the reserved/devolved split since 1998 of which the most relevant to the current context were changes following the Calman and Smith Commissions and subsequent intergovernmental negotiations that led to the Scotland Acts of 2012 and 2016. Those included devolution, amongst other things, of certain powers in relation to social security, and limited powers to raise revenue through taxation. Under the Fiscal Framework agreed between the UK and Scottish Governments in 2016 [KT2/002 – INQ000102914], however, it remains the case that much of the Scottish Government's funding is determined through the operation of the Barnett Formula from the effect of UK Government decisions about spending in England.

The Scottish Parliament

13. The Scottish Parliament is made up of all members of the Scottish Parliament (MSPs), of which there are 129, and is the law-making body for devolved matters in Scotland. Elections are on the basis of the additional member system of proportional representation with constituency members and regional list members. Like Westminster, the Scottish Parliament considers and passes Bills that become primary legislation (Acts of the Scottish Parliament) and it considers secondary legislation on a similar basis as Westminster. The Parliament also scrutinises the activities and policies of the Scottish Government through debates, parliamentary questions and the work of committees. Broadly, committee remits align with Ministerial portfolios, but the Parliament also, for example, established a Committee specifically to consider matters relating to the Covid-19 pandemic. The Parliament and its committees have powers to call witnesses to give evidence. As well as MSPs, the Lord Advocate and the Solicitor General may speak in Parliament.

14. The Scottish Parliament cannot legislate for matters that are beyond its competence, as defined by the 1998 Act. The Scottish Parliament may amend or repeal Westminster legislation that applies to devolved areas.

The Scottish Government

15. The Scottish Government comprises the First Minister, Cabinet Secretaries (formally "Ministers" under the 1998 Act) and the Law Officers – the Lord Advocate and the Solicitor General – collectively described under the Act as "the Scottish Ministers". There are also Ministers (formally "junior Scottish Ministers" under the 1998 Act). As set out in Part II of the Scotland Act

1998, the First Minister is nominated by the Parliament and appointed by the Sovereign (the other Scottish Ministers, except the Law Officers, being appointed by the First Minister with the approval of the Sovereign and the agreement of Parliament). The Lord Advocate and Solicitor General are appointed by the Sovereign on the recommendation of the First Minister and with the agreement of the Scottish Parliament (section 48, Scotland Act).

16. With the exception of certain functions exercisable by the First Minister or the Scottish Law Officers alone, most of the Scottish Ministers' powers and duties (like those of "the Secretary of State" in the UK Government) are exercisable by them collectively.

17. The Lord Advocate is both the head of prosecutions and the investigations of deaths in Scotland and the principal legal adviser to the Scottish Government. The Solicitor General acts as the Lord Advocate's deputy. The Lord Advocate and the Solicitor General are Law Officers. The Law Officers are not members of the Cabinet but may attend Cabinet: the Lord Advocate in her capacity as principal legal adviser to the Scottish Government and in her absence, the Solicitor General, as the Lord Advocate's deputy. Cabinet government in the Scottish Government operates on a similar basis to that at Westminster. Cabinet decision-making operates on the basis of collective responsibility as set out in the *Scottish Ministerial Code* [KT2/003 – INQ000102901].

18. From 2007 to date the SNP has formed the Scottish Government. In addition, two Ministers were appointed from the Scottish Green Party in 2021.

The Scottish Administration

19. Under the 1998 Act, "the Scottish Administration" comprises the members of the Scottish Government, junior Scottish Ministers, various non-ministerial office-holders (for example the Registrar General of Births, Marriages and Deaths), and their staff.

The Civil Service

20. The relationship between the Civil Service and Scottish Ministers is set out in statute at section 7 of the Constitutional Reform and Governance Act 2010, and further expanded in the separate Civil Service Code for the civil service supporting the Scottish Government (see Sections 2 and 14) [KT2/004 – INQ000131054]. The effect of the 2010 Act, and the Code that flows from it, is to require the civil service to deliver the instructions of Scottish Ministers where those instructions meet the tests of being lawful, do not bring civil servants into conflict with their obligations set

out in the Civil Service Code and meet the relevant Accountable Officer tests. Further information on this is provided in the Module 2A corporate statement provided 23 June 2023 by DG Corporate.

21. The Permanent Secretary is the principal policy adviser to the First Minister and Secretary to the Scottish Cabinet. Under section 14 of the Public Finance and Accountability (Scotland) Act 2000, the Permanent Secretary as Principal Accountable Officer (PAO) is personally answerable to Parliament for ensuring the propriety and regularity of the finances of the Scottish Administration and for ensuring that its resources are used economically, efficiently and effectively, and thus give value for money. Therefore, in addition to ensuring lawfulness and compliance with the terms of the Civil Service Code, it is also essential that all activity is undertaken within the parameters of the relevant PAO tests set out in the 2000 Act. More details are provided in the Module 2A corporate statement provided 23 June 2023 by DG Corporate.
22. Civil Servants working for the Scottish Government (unlike those in the Northern Ireland Civil Service) are part of the Home Civil Service, and Senior Civil Service grades are the same as elsewhere. Like Whitehall departments the Scottish Government has its own distinct terms and conditions of employment. The Civil Service in the Scottish Government does not have Departments on the Whitehall model, but rather a more flexible and unified structure comprising directorates and executive agencies. A number of Directors General each oversee groups of directorates and agencies. There is also a number of non-ministerial office-holders, and their staff.

Funding Arrangements

23. The Scottish Government is responsible for deciding, subject to approval of budget legislation by the Scottish Parliament, how public money will be spent each year, and it publishes these spending plans in the annual Scottish Budget. The Scottish Government approaches to taxation and spending are intended to support its central purpose of achieving sustainable economic growth. The money that central government has to spend, collectively called the Scottish Consolidated Fund, comes from the following sources:
- block grant from the UK Government
 - Scottish income tax (collected by HMRC)
 - non-domestic rates (collected by local authorities and redistributed by the Scottish Government)
 - devolved taxes (collected by Revenue Scotland)

- borrowing.

24. The block grant is funded from money the UK government has raised through taxation supplemented by borrowing as required. Details of how the Scottish Government is funded can be found in the Module 2A DG Scottish Exchequer (Financial Management Division) corporate statement provided 23 June 2023, with further details set out in the *Statement of Funding Policy* provided [KT2/005 – INQ000102912]. The change to the Block Grant each year is calculated as a population share of changes in funding for public services in England where responsibility is devolved to Scotland. This is calculated using the Barnett Formula. For all taxes set, raised or assigned in Scotland, the block grant is correspondingly reduced.

Local Government

25. A single-tier system of local government replaced the previous Scottish Regional and District authorities in 1996. Local government comprises 32 local authorities (or 'councils') which provide public services, including education, social care, waste management, libraries and planning. Councils operate independently of central government and are accountable to their electorates for the services they provide. Local authorities vary considerably in size and population, but all have responsibility for providing a range of public services to the communities in their area.

26. Each council is made up of councillors who are directly elected by the residents of the area they represent. The council area is divided into a number of wards, and three or four councillors are elected for each ward. There are 1227 councillors, elected using the Single Transferable Vote (STV) system.

27. The Convention of Scottish Local Authorities (COSLA) was formed in 1975 to represent the views of Scotland's local authorities to central government. It also acts as the employers' association for local authorities. Council officers collaborate with those in other councils through a wide range of professional bodies.

28. The Local Governance (Scotland) Act 2004 sets out provisions for local government elections and expenses, and new requirements for the membership of local authorities (including pay and pensions). The Local Government in Scotland Act 2003 introduced a range of new duties for local authorities, including requirements to secure best value, engage in community planning and additional enforcement and financial functions. The Local Government etc. (Scotland) Act

1994 set the current structure of local government in Scotland. The Local Government (Scotland) Act 1973 establishes many local authority powers and responsibilities.

The Wider Public Sector

29. The public sector in Scotland includes a diverse range of organisations in addition to the Scottish and UK Governments and local government. Those include, for example, Non-Departmental Public Bodies sponsored and funded by one of the two governments, office-holders within the Scottish Administration (see above), “cross-border public authorities” operating across the reserved/devolved or with pan-GB or pan-UK responsibilities and with a range of arrangements for shared sponsorship between governments, bodies sponsored and funded directly by the Scottish Parliament, the UK Armed Forces (overseen by UK Government Ministers), and (in devolved areas) Police Scotland, the Scottish Fire and Rescue Service and the National Health Service.

Health Service

30. The National Health Service (Scotland) Act 1947 came into effect on 5 July 1948 and created the National Health Service in Scotland. Many sections of the Act were repealed by the National Health Service (Scotland) Act 1972 and the remaining provisions were repealed by the National Health Service (Scotland) Act 1978. NHS Scotland has a budget of around £17 billion and currently employs approximately 165,000 staff working across 14 territorial NHS boards and a number of other special NHS boards and health bodies. Each NHS board is accountable to Scottish Ministers, supported by the Scottish Government Health and Social Care Directorates. territorial NHS boards are responsible for the protection and the improvement of their population’s health and for the delivery of frontline healthcare services. Special NHS boards and other health bodies provide a range of important specialist and national services including, for example, the Scottish Ambulance Service. All NHS boards work together for the benefit of the people of Scotland. They also work closely with partners in other parts of the public sector to fulfil the Scottish Government’s Purpose and National Outcomes.

31. In 2010, the Public Services Reform (Scotland) Act 2010, created 2 new regulatory bodies:

- the Care Inspectorate – is the national regulator for care in Scotland
- Healthcare Improvement Scotland – works with health boards to improve the safety and reliability of healthcare as well as having an interest in improvement, scrutiny and evidence.

32. In 2014, The Public Bodies (Joint Working) (Scotland) Act 2014 brought together elements of health and social care in to a single, integrated system. Thirty-one Integration Authorities were established in 2016 and are now responsible for around £9 billion of funding for local services, which was previously managed separately by NHS Boards and Local Authorities.
33. In June 2022, the National Care Service (Scotland) Bill was introduced to the Scottish Parliament. The Bill seeks to improve the quality and consistency of social services in Scotland by giving Scottish Ministers a duty to promote a comprehensive and integrated care service.
34. An overview of the Scottish Government's approach to 'super spreader' events and use of Test and Protect is addressed in the 'Health and Social Care' statement. An outline of the approach to the concept of 'herd immunity' can be found in the Module 2A Health and Social Care (Expert Health Entities) corporate statement provided 23 June 2023.

Resilience

35. The Civil Contingencies Act 2004 applies to the whole of the UK and seeks to minimise disruption in the event of an emergency and to ensure that the UK is better prepared to deal with a range of emergencies. The Act is separated into two substantive parts:
- Part 1: focuses on local arrangements for civil protection, establishing a statutory framework of roles and responsibilities for local responders
 - Part 2: focuses on emergency powers, establishing a framework for the use of special legislative measures that may be required to deal with exceptionally serious emergencies.
36. In Scotland, the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 as amended in the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Amendment Regulations 2013 sets out further detail on the application of the Act in Scotland, with particular regard to the duties and roles of responders. Whilst responsibility for most resilience and civil contingencies matters is devolved, some key issues, such as national security, counter-terrorism and energy policy, are reserved to the UK Government and Parliament.
37. Management of the consequences of any emergency occurring in Scotland is devolved to the Scottish Parliament. The Scottish Government therefore always leads on consequence management in Scotland. When an emergency occurring in Scotland has implications for UK Government, a Lead Government Department may be nominated. Scottish Government

Directorates will work closely with UK Lead Government Departments to ensure co-ordinated government activity in Scotland.

Cooperation and Joint Working with the UK Government and the other devolved administrations

38. Following the creation of the devolved legislatures in 1999, the UK and devolved governments agreed a *Memorandum of Understanding* on Devolution and supplementary “concordats” [KT2/006 – INQ000131050] that amongst other things established arrangements for liaison and dispute management, with a Joint Ministerial Committee in various formats including a Plenary format (JMC(P)) chaired by the Prime Minister with participation by the First Minister of Scotland and the heads of the other devolved governments. The JMC structure was intended mainly as a liaison mechanism rather than for decision-making, given the separate lines of accountability of the participating governments. The MOU has been updated from time to time – most recently in October 2013. The MOU emphasises the need for good communication, consultation, and co-operation between the UK Government and devolved governments.

39. In 2018, the four Heads of Government commissioned a Review of Intergovernmental Relations to ascertain if the JMC structures were still fit for purpose in light of the UK’s exit from the EU. The outcome of the Review was published by the UK Government in January 2022 [KT2/007 – INQ000102928], with devolved governments agreeing to use a new, three-tier structure comprising:

- Portfolio engagement at official and ministerial level
- Engagement on cross-cutting issues, including an Inter-ministerial Standing Committee
- A Prime Minister and Heads of Devolved Governments Council.

40. Neither this new structure nor the JMC structure that preceded it was intended to be the only conduit for intergovernmental working. On the contrary, the high-level formal structures have always been the complement to extensive bilateral and multilateral engagement and co-operation, formal and informal, between the governments, both on areas that are devolved and where devolved and reserved policies interact.

Intergovernmental working on Covid-19

41. This section is an overview of the arrangements for working between the four governments in the UK and how they evolved during the pandemic. However, liaison with counterparts in the other governments in the UK was part of the role of hundreds of civil servants across the

Scottish Government. An extensive ecosystem of intergovernmental working on resilience, health, economic and financial matters was already in place, as it is across the breadth of governmental responsibilities. Intergovernmental working flexed to deal with the pandemic, including through a wide range of additional liaison mechanisms.

42. Intergovernmental working on Covid-19 was based on the established arrangements set out above, which evolved and were supplemented as necessary. Broadly there were three phases of interaction:

- Phase 1: Pre-2020 liaison on contingency planning and preparations largely through Health and Resilience channels
- Phase 2: January to May 2020. Engagement on the initial response, primarily through Resilience and Health liaison mechanisms including the Cabinet Office Briefing Rooms (COBR), and then from March to May intense engagement including through Ministerial Implementation Groups – UK Government committees that were set up and to which in some cases devolved governments sent Ministerial participants
- Phase 3: June 2020 to April 2022. Formal and informal official and ministerial engagement mainstreamed into the four governments’ handling of the response to the pandemic and planning for recovery.

43. In Phase 1, prior to the Covid-19 pandemic, the Scottish Government took part in UK-wide pandemic planning and exercises.

44. What is described in the following paragraphs in relation to Phase 2 was just part of a much wider range of formal and informal engagement between the four governments, at both official and ministerial level covering, for example:

- Scientific Advisory Group for Emergencies (SAGE), Scientific Pandemic Influenza Group on Modelling (SPI-M), Scientific Pandemic Insights Group on Behaviours (SPI-B), Joint Committee on Vaccination and Immunisation (JCVI), Joint Biosecurity Centre (JBC), UK Health Security Agency (UKHSA) and other scientific and health advisory and decision-making mechanisms
- liaison on the establishment of the mass testing programmes. In Scotland there was a Scottish NHS testing system and a UK-wide one, with arrangements for co-ordination, liaison and decision-making on PPE and medicines supply
- liaison and decision-making on vaccine development, supply, policy and roll-out and Covid status certification
- liaison on the “Test and Protect” system and equivalents elsewhere in the UK.

- liaison between Finance Directorates and HM Treasury
- liaison on international travel controls including quarantine
- liaison on education matters, including movement of students.

45. A chronology of SAGE meetings attended by Scottish Government officials is provided: [KT2/008 – INQ000131019]. Officials also attended meetings of SPI-M and SPI-B. Four nations work also took place through the 'Four Country Modelling Group' which met throughout the pandemic and had its secretariat in the Welsh Government before transferring to JCB/UKHSA late in the pandemic
46. Many aspects of health policy and delivery are devolved matters and so the responsibility of the Scottish Government rather than the UK Government. There was, however, a well-established ecosystem of formal and informal arrangements for liaison and, if the governments agreed, joint action.
47. The Scottish Government contributed, on behalf of Scottish interests, to the development of UK-wide strategies and pandemic planning exercises, including the UK Pandemic Influenza Strategy and the Coronavirus Action Plan, which informed the early response to the pandemic.
48. Between January and June 2020, the Scottish Government participated in a number of intergovernmental fora. Some of these were created specifically in relation to Covid-19 and some were part of well-established UK health protection resilience mechanisms.
49. The UK Government's resilience committee, named after the Cabinet Office Briefing Rooms (COBR) at 70 Whitehall in London, is often used to co-ordinate actions by the UK Government in response to instances of national or regional crisis, or during events abroad with major implications for the UK. Devolved representatives are invited to some COBR meetings. The Cabinet Secretary for Health and Sport, Ms Freeman, attended a first Covid-19 related meeting on 24 January 2020 and subsequent meetings on 29 January, 5 February, 18 February and 26 February 2020. The First Minister participated in subsequent meetings throughout March 2020. Both the First Minister and Ms Freeman participated in a PM-chaired COBR on Monday 2 March to discuss and clear the *Four Nations Coronavirus (Covid-19) Action Plan*, provided: [KT2/009 – INQ000131020], a plan describing the intended approach of the governments to preparing and responding to the novel coronavirus outbreak. The rhythm of COBR(M) (Ministerial as opposed to Official) meetings intensified during March in preparation for national

lockdowns across the UK due to the deterioration of the situation. A chronology of COBR meetings has been provided to the Inquiry: [KT2/010 – INQ000131051].

50. The four nations' Chief Medical Officers (CMOs) met to consider their advice to the health and social care sectors across the UK and government agencies in all parts of the UK involved in responding to this outbreak. This group met regularly throughout the pandemic. Covid-19 specific four nation CMO meetings began at the end of January 2020 and continued thereafter. Frequency varied. In some weeks UK CMOs met multiple times and each meeting also varied in topic; often UK CMOs met to give a brief update of the situation in each nation. A chronology of the four nations' CMO meetings has been provided to the Inquiry: [KT2/011 – INQ000131021].

51. In March 2020, four Ministerial Implementation Groups (MIGs) were established by the UK Government to consider and oversee specifics of the Covid-19 response, with devolved participation in three of them. The four MIGs were:

- General Public Sector (GPS): The Chancellor for Duchy of Lancaster (CDL) chaired this group and the Deputy First Minister (DFM) and other Scottish Government Ministers participated, depending on the agenda. There were 35 of these meetings between 23 March and 21 May 2020. The GPS MIG generally met every weekday (for around an hour) covering a wide range of topics. Due to the wide-ranging agenda, there was no fixed Scottish Government Minister in attendance. Often the DFM would participate where it was a broad agenda. The GPS MIG terms of reference defined its role as to coordinate and advise on public sector issues relating to the pandemic across the UK, excluding the NHS and social care. A chronology of the meetings of the GPS has been provided to the Inquiry: [KT2/012 – INQ000131022].

In particular, the GPS MIG was intended to:

- Make sure public services could continue to provide appropriate support to citizens
- Oversee policy interventions (e.g. volunteering/ community support) outside of public services that directly relate to citizen support
- Ensure there was a cross-Government perspective on public sector readiness, that gaps in business continuity (including workforce) are identified and are reflected in cross-Government decision making
- Provide an escalation route for emerging issues for citizens and public service delivery to ensure that there is an appropriate response from the Government

Discussion at the GPS MIG (initially five days a week) was concerned with identifying and tackling emerging logistical challenges as they arose during the early months of the pandemic. In practice – from March to May 2020 – the GPS MIG discussed a broad range of issues including: distribution of PPE; payment of welfare benefits; public order during lockdown; food security; transport resilience; schools; vulnerable children; impact of lockdown on the Higher Education sector; labour supply to the agricultural sector; courts; prisoner release; and burials

- Health: The Secretary of State for Health, Mr Hancock, chaired and the Minister for Public Health, Sport and Wellbeing, Mr Fitzpatrick, attended five of these between 23 March and 26 May 2020. A chronology of the meetings attended by Scottish Government officials has been provided to the Inquiry: [KT2/012 - INQ000131022]
- Economy and Business: The Chancellor of the Exchequer chaired and the Cabinet Secretary for Economy, Fair Work and Culture, Ms Hyslop, attended six of these between 31 March and 14 May 2020. A chronology of the meetings of the Economy and Business Implementation Group has been provided to the Inquiry: [KT2/014 – INQ000131024]
- International: The Secretary of State for Foreign, Commonwealth and Development Affairs, Mr Raab, chaired. Devolved governments were not invited to participate on the basis that the UK Government considered the matters under discussion to be wholly reserved. However, the Minister for Europe and International Development, Ms Gilruth, attended seven weekly meetings hosted by Foreign and Commonwealth Office Minister Adams with the Devolved Governments and Territorial Offices to discuss IMIG issues.

52. MIGs were a UK Government internal mechanism to which devolved Ministers were invited. The process was intended to facilitate co-ordination of the response across the UK in a way that allowed the development of common, and where necessary, distinctive approaches in Scotland, Wales and Northern Ireland in a way that reflected the responsibilities of devolved governments and the respective devolution settlements.

53. CDL/Heads of Devolved Governments calls. In May 2020 it was agreed that the heads of devolved governments would meet regularly with the CDL, Michael Gove, to speak about social distancing and other measures as the situation evolved. Those calls continued through the pandemic.

54. From April 2020, the Scottish Government Permanent Secretary called into regular Covid-19 Cabinet Secretary Officials Meetings (Cab Sec (O)) chaired by the secretary to the UK Cabinet, Sir Mark Sedwill, with representation from across the UK Government as well as the devolved

administrations. As well as stock-takes of developments in the pandemic, those meetings included 'deep dive' discussions of particular topics. From early June 2020 participation was opened to Directors General and so depending on the agenda and diary pressures, a relevant DG from Scottish Government would sometimes call in in place of the Permanent Secretary. From late January 2021 to June 2021 Scottish Government officials called into Covid-19 Permanent Secretary Officials Meetings (Perm Sec (O)) chaired by a senior UK Government official.

55. In April 2020 it was agreed to establish a UK-wide Covid-19 coordination forum, convened by the Cabinet Office, to supplement the existing co-operation forums. That met for the first time on 28 April 2020 and regularly through the pandemic thereafter. Given the established arrangements for liaison between Health officials, the focus of this forum was mainly on the strategic approaches of the four governments to their responses to the pandemic, including the imposition and relaxation of restrictions. The forum's role was information exchange and identification and 'snagging' of issues rather than decision-making. Regular participation from the Scottish Government was led during 2020 by the Cabinet and Constitution Director and UK Relations Team, with other officials participating as necessary. The Director for Outbreak Management (later entitled Covid Co-ordination Director) and her team took over the lead at the start of 2021.
56. In relation to Phase 3 between June 2020 and April 2022, the following summarises how intergovernmental working evolved following the initial intense phase of interaction, through the gradual relaxation of restrictions in the summer of 2020, the return to lockdown after Christmas that year, and the process of reopening and recovery during 2020 and 2021. Once again, it should be stressed that there was a wide range of informal and formal engagement in addition to what is described below.
57. The gradual re-opening in summer 2020, following national lockdowns across the UK and the progress in tackling the virus, saw a less intense rhythm of intergovernmental engagement.
58. At all times, the Scottish Government's actions in response to the Covid-19 pandemic were guided by the best and most up-to-date expert scientific advice. It was a strength of devolution that this advice was able to guide a different approach, when necessary, to meet the specific circumstances in Scotland.
59. At the end of May 2020, the UK Government replaced the MIGs with the C-19 Strategy Committee (Covid-S), chaired by the Prime Minister and a C-19 Operations Committee (Covid -

O), chaired by the CDL. These were internal UK Government mechanisms in which the Scottish Ministers did not participate except in relation to C-19 Operations Committee meetings on international travel.

60. The UK Government's Department of Health and Social Care continued to co-ordinate Health Ministers' meetings.

61. CMOs continued to meet regularly throughout the pandemic. Frequency varied and in some weeks, the CMOs met multiple times. Each meeting also varied in topic; sometimes CMOs met just to exchange updates on the situation in each nation.

62. After discussion and correspondence about how best to organise four nations' liaison, a pattern of regular engagement between the Scottish Government and UK Government was as follows.

- CDL/Heads of Devolved Governments calls described for Phase 2 above. From September 2020, Steve Barclay MP or Michael Ellis MP sometimes chaired
- Scottish Government senior officials continued to participate in the Cab Sec (O) and Perm Sec (O) meetings described for Phase 2 above
- Weekly meetings of the UK-wide C-19 coordination forum described for Phase 2 above.

63. Examples of topics discussed through these mechanisms included:

- progress against the various "Route/Road Maps" easing restrictions in 2020 and 2021
- tightening of restrictions in late 2020
- arrangements for Christmas 2020
- intra-UK travel restrictions and guidance
- reviewing ongoing Covid-19 situational reports and data updates
- protective Measures and Non-Pharmaceutical interventions (i.e. face coverings, Covid-19 status certification, international travel restrictions)
- approaches to the sustained re-opening and operation of schools and wider educational settings
- workforce planning and supply chain issues
- response to different variants of concern (Alpha, Beta, Delta, Omicron)
- vaccine rollout and supply/ the cross-UK vaccination campaign
- autumn/ winter seasonal planning.

64. There was also a series of four nation Ministerial Covid-19 calls that took place specifically to discuss international travel measures, with Scottish Government support led by officials from the Directorate for External Affairs and the Health Directorates.
65. A number of COBR(M) meetings were also attended by devolved ministers, although as a communication mechanism COBR(M) was largely overtaken by the others. A COBR(M) meeting took place on 22 September 2020 to discuss the response across the UK to increasing numbers of Covid-19 cases. This led to publication of a Joint Statement on Covid-19 on 25 September 2020 on the four nations' *shared commitment to suppressing the virus to the lowest possible level and keeping it there* [KT2/015 – INQ000131053]. Following the deterioration of the epidemic, a further COBR(M), chaired by the Prime Minister and attended by First Ministers took place on 12 October 2020. On 2 November 2020 the Committee met in response to the decision to introduce a second national lockdown in England on 5 November to reduce the transmission of Covid-19.
66. After February 2022, four nation meetings moved to a slower rhythm, given the success of the vaccine programme in protecting the population against serious illness and the epidemic moving into a calmer phase across the UK. Four nation Ministerial meetings chaired by the CDL continued for the rest of the period, but with agenda broadened to cover, for example, the UK Government's "Levelling Up" White Paper and matters relating to the war in Ukraine.

British-Irish Council (BIC)

67. Between January 2020 and April 2022, five BIC Summits were held. Covid-19 resilience was discussed at these events, but BIC (with membership from government outwith the UK) was not part of the UK's internal decision-making or liaison apparatus. So, although Covid-19 was inevitably among the topics of discussion during this period, it is important to note that BIC was not a decision-making forum and the discussions which took place were characterised by information sharing between governments.

Decision-making by the Scottish Government relating to non-pharmaceutical interventions (NPIs)

The Initial "lockdown" in March 2020

68. On 3 March 2020, in response to international epidemiological developments and early cases of Covid-19 within the UK, the four governments of the UK published a planned response to the pandemic, set out in the *Coronavirus: Action Plan*:

“The overall phases of our plan to respond to Covid-19 are:

Contain: detect early cases, follow up close contacts, and prevent the disease taking hold in this country for as long as is reasonably possible

Delay: slow the spread in this country, if it does take hold, lowering the peak impact and pushing it away from the winter season

Research: better understand the virus and the actions that will lessen its effect on the UK population; innovate responses including diagnostics, drugs and vaccines; use the evidence to inform the development of the most effective models of care

Mitigate: provide the best care possible for people who become ill, support hospitals to maintain essential services and ensure ongoing support for people ill in the community to minimise the overall impact of the disease on society, public services and on the economy.”

69. The response moved from ‘contain’ to ‘delay’ on 12 March 2020, when community transmission had been confirmed for the first time in Scotland (and the day after the World Health Organisation (WHO) had declared Covid-19 a ‘pandemic’). This move led to the introduction, in stages, of an unprecedented set of NPIs, culminating in ‘lockdown’, as more traditional ‘precision’ public health measures such as isolation became insufficient and population-level interventions were deemed necessary.

70. On 16 March 2020 events of more than 500 people were cancelled across the UK. On 17 March 2020, the First Minister, in a statement to the Scottish Parliament, urged every citizen to reduce all non-essential social contact. The closure of schools and nurseries in Scotland was announced on 19 March 2020. Across the UK, on 20 March 2020, hospitality and other social venues were requested to close and, on 23 March 2020, ‘Stay at Home’ requirements came into effect under which no-one should leave home except for certain limited purposes including: to commute to work if working at home were not possible and the workplace was permitted to remain open; to shop for necessities; to assist older and vulnerable people; and to exercise outdoors, alone or with household members. On 24 March 2020, the Scottish Parliament gave legislative consent for the UK Coronavirus Bill including emergency powers for the Scottish Ministers. The Scottish ‘lockdown’ regulations were made under these powers on 26 March 2020 and came into force immediately.

71. It can be seen from published data that, even though the impacts of Covid-19 on morbidity and mortality across the UK were already severe and would remain so in the following weeks, this lockdown succeeded in reducing the R number (the average number of people that each infected person passes the virus on to) significantly below one and therefore arresting the growth and then inducing a decline in prevalence in Scotland and across the UK over the course

of April and into May. The lockdown position was not sustainable in the medium term, however, as notwithstanding the various types of support made available including the UK Government's 'furlough' scheme, the disruption to everyday life and impact on the economy were both extreme.

Scottish Government's overall approach to using NPIs

72. The Scottish Government's strategic aim was to minimise the overall harm of the pandemic. In April 2020, building on the Action Plan and to aid transparency, the Scottish Government published the way it would take future decisions on its pandemic response in the *Framework for Decision Making*, provided: [KT2/016 – INQ000131025]. This document enunciated the Scottish Government's principles and approach to managing the pandemic, particularly in relation to the use of NPIs.

73. A key part of the approach described in the *Framework for Decision Making* was to marshal the many and various harms of the pandemic into four categories:

- Harm 1: direct Covid-19 harm
- Harm 2: other health harm caused by the pandemic
- Harm 3: societal harm
- Harm 4: economic harm

74. As the Framework document noted: "Navigating the right course through the crisis will involve taking difficult decisions that seek to balance these various, inter-related harms so as to minimise overall harm." A published update, *Framework for Decision Making – Further Information* (5 May 2020), provided: [KT2/017 – INQ000131026] explained how the Scottish Government's approach to NPIs was developing in light of epidemiological conditions. A supporting evidence paper (7 May 2020), provided: [KT2/018 – INQ000131027] explained the various types of evidence being considered as part of 'four harms' assessments of NPI options. Additional information on the evidence used in four harms assessments was set out in a further publication in December 2020, provided: [KT2/019 – INQ000131028].

75. The concept of the 'Four Harms' was that the pandemic, and measures in response to it, could cause harm in four areas, as follows:

- direct Covid-19 health harms: primarily, the mortality and morbidity associated with contracting the disease

- broader health harms: primarily, the impact on the effective operation of the NHS and social care services associated with large numbers of patients with Covid-19, and its knock-on effects on the treatment of illness
- social harms: the harms to wider society, in terms (for example) of education attainment as a result of school closures
- economic harms: for example through the closure of businesses.

76. The harms that Scottish Ministers were seeking to reduce were often ‘non-linear’: that means that they did not increase or decrease over time at a steady pace. For example, a business might survive a fortnight of enforced closure but not two months. Consequently, the economy might see an accelerating increase in harm the longer that measures on business were in place. Other examples of complexity stemmed from the uncertainty surrounding many of the parameters needed to assess harm and from the reality that the relative harms were changing over time – for example as increasing vaccination coverage and improved treatments reduced the direct Covid-19 health harm for a given level of prevalence of the virus in Scotland.

77. Given the complexities and uncertainties in assessing the pandemic’s various harms, it was necessary for rational decision making to adopt ways to simplify and otherwise make sense of information, such as marshalling the various negative impacts into four harm categories. While simplifying some of the complexity, this approach could not, however, remove all uncertainty – for example, about the current and future state of the pandemic, about the timing of future vaccines and treatments, about the impact of responses, etc. This presence of significant uncertainty justified a role for the application of judgement in decision-making, taking all factors into consideration, including those that were difficult to quantify with much accuracy or confidence. This uncertainty also provided justification for adopting a cautious approach, particularly at stages during the pandemic when the risk to public health was potentially extreme.

78. Decisions needed to be taken about when to ease or tighten measures, about how much measures should be eased or tightened, and about which measures should be eased or introduced or changed or removed. These decisions required assessments to be made of the current and near-term state of the pandemic (and hence how much of a change in measures was warranted given the need to suppress the virus) and of the effects of changing different measures, alongside consideration of the potential interaction of measures. Further information on the intended approach to phasing the easing of measures was set out in an internal Scottish Government document: *General Principles for Phasing*, in May 2020, provided: [KT2/020 – INQ000131040].

79. Because the four harms of the crisis potentially moved in different directions as a result of changes in measures (e.g. re-opening schools might increase prevalence of the virus and hence 'harm 1' but mitigate educational impacts and hence reduce societal 'harm 3'), decisions could involve a trade-off between the different harms. This trade-off was often more subtle than was presented in public discourse (e.g. it was never as simple as a stark choice between prioritising health or the economy).
80. Decisions were required on whether to make measures legal requirements or restrictions set out in regulations, with the force of law (including enforcement measures) behind them, or whether to set measures out in public health guidance that sought to urge people to behave and settings to operate in ways that would reduce transmission but without compulsion or enforcement. The decision on whether to use regulations would depend on the severity of the measure and whether regulating was proportionate. Judgements on proportionality would reflect the current state of the public health emergency and the potential impact of the measure in mitigating it, where that impact would depend to on the degree of adherence to the measure. Regulations which make mandatory provision ("you must") will likely achieve greater adherence than requests which are advisory in nature ("you should") such as those contained in guidance.
81. In practice, NPIs were placed in regulations when it was judged that adherence with the specific requirements or restrictions was important enough for reducing transmission as to require mandating and the possibility of legal enforcement if they were not complied with. In contrast guidance could be used when it was judged disproportionate or unviable in practice to compel specific behaviours or actions in law. Guidance was also used to support regulations.
82. In addition to considering the impacts of NPIs on the four harms in making decisions about which to apply and when, other factors also needed to be taken into account as set out in the Framework for Decision Making. These included the need to ensure that the decisions on NPIs were lawful (which included requiring measures to be necessary, proportionate and justifiable). To ensure that the Scottish Government's approach remained lawful, regular formal assessments were made on a timetable set out in the regulations – for example, at least every three weeks – on the necessity and proportionality of all the legal measures. This included both existing legal measures (for continuation) and potential changes in measures (introduction and removal). The test applied was whether a measure was "necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Scotland with coronavirus".

83. Based on evidence and analysis, provided to it on a weekly basis, about the state of the pandemic and the impact of measures, the Scottish Government's Cabinet would regularly decide whether it judged both the measures in place at that point and any proposed additional measures to be necessary and proportionate to control the spread of coronavirus (and hence justifiable in the context of an ongoing public health emergency). The Cabinet was aware that legal measures that were not considered to be necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection with coronavirus would need to be removed.
84. Decisions concerning NPIs also needed to take account of the impacts of measures on different sectors, communities and groups within the population. These decisions were supported by a range of evidence both academic and derived through lived experience. Regular public engagement on different aspects of the pandemic was conducted to inform Scottish Government's responses including polling, focus groups, telephone interviews and online consultations. The results of this engagement can be seen in a variety of published documents provided with this statement: [KT2/021 – INQ000131029], [KT2/022 – INQ000131030], [KT2/023 – INQ000131031], [KT2/024 – INQ000131032], [KT2/025 – INQ000131033], [KT2/026 – INQ000131034], [KT2/027 – INQ000131035] and [KT2/028 – INQ000131036].
85. 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. For example in May 2020 an initial paper was published on restrictions in schools, provided: [KT2/029 – INQ000131037] while in October 2020 a paper was published on the impacts on hospitality restrictions, provided: [KT2/030 – INQ000131038]. A full response in relation to the equalities considerations will be given in the response provided by the Equalities, Inclusion and Human Rights Directorate in due course.

Evolution of the Scottish Government's approach to NPIs over the course of the pandemic

86. Over time the nature of the broader crisis caused by the pandemic evolved. Both the virus and the impacts and responses it led to changed. The virus itself became much more transmissible over time as successive variants with increased transmissibility came to dominate. Clinical and pharmaceutical responses to the virus, both in the form of treatments and vaccinations, were developed and improved, tending to reduce the direct health harms that would result from transmission. Increasing acquired immunity and/or protection from severe illness, as more people became infected (either with or without vaccination), also tended to reduce adverse health effects from infection.
87. Understanding of the virus also evolved as did understanding of the impacts of NPIs. The way people behaved in relation to the virus also changed, as adherence to measures adjusted, particularly as a significant percentage of the population gained increased immunity or protection through vaccination and/or prior infection.
88. From relatively early in the pandemic, the Scottish Government's approach to NPIs was influenced by 'the hammer and the dance' concept set out by Thomas Pueyo in his article *Coronavirus: Why You Must Act Now*, provided: [KT2/031 – INQ000131039]. This argued for a severe set of initial NPIs ('the hammer') followed by variable application of NPIs according to the state of the pandemic ('the dance') before an effective vaccine was rolled out at some unknown time in the future. The potential for further outbreaks of the pandemic in Scotland after the initial peak had been suppressed was recognised, alongside the need to respond to them through reintroducing NPIs in some degree. This approach, along with the uncertainty that then existed about the timing of the vaccine and effective treatments, was set out in the Update to the Framework for Decision Making in early May 2020.
89. The relative balance of harms also developed over time, in response to the factors above and to wider developments. In particular, in considering how to minimise overall harm across all four harms, it mattered how long measures had already been in place, causing escalating societal or economic harms. For example, in considering whether to retain measures for business, general economic conditions and the additional challenges placed on businesses through NPIs were both relevant in assessing harm. A restriction on business activity that was judged proportionate when no-one in the population was vaccinated against Covid-19 and financial support for such businesses was available might well have been judged disproportionate when 90% of the adult population had been vaccinated and financial support had been withdrawn. As another example, in considering measures on education, including schools, which were implemented by

Ministerial direction under powers in the Education Acts, how much educational time had already been disrupted was a relevant factor.

90. While retaining a high degree of consistency with the approach and principles set out in the Framework for Decision Making in April 2020, over the course of the pandemic the Scottish Government's approach adapted to reflect the evolving, multi-faceted nature of the crisis. Over time, and with increasing vaccination coverage, the Scottish Government's overall strategic approach to minimising harm was adjusted.

91. When there was zero or relatively low vaccine coverage in Scotland and the health risk to an individual from catching Covid-19 (particularly for older individuals or those with other vulnerabilities) was relatively high, the trade-off between the different harms was such that minimisation of overall harm depended crucially on bearing down very heavily on prevalence of the virus. Thus, the strategic priority in 2020 and the first half of 2021 was on suppressing prevalence, even at the expense of considerable broader harms. Consequently, in the Scottish Government's October 2020 Strategic Framework publication, the strategic intent was to:

"suppress the virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible."

92. Once vaccine coverage in the older age-groups in the population had reached relatively high levels in Scotland later in 2021 and the health risk to the average individual (and particularly older, vaccinated individuals) had fallen considerably, the trade-off between the different harms changed, and the Scottish Government's strategic intent was adjusted in the June 2021 Strategic Framework Update to:

"suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future."

93. In the Strategic Framework Update published on 22 February 2022, the Scottish Government's strategic intent was revised for the last time to:

"manage Covid-19 effectively, primarily through adaptations and health measures that strengthen our resilience and recovery, as we rebuild for a better future."

94. Practically, this meant that the government would now be less driven by suppressing transmission than in the past, and more concerned with reducing and mitigating harm more

generally. This recognised that – after two years of the pandemic and in light of developments in vaccines and treatments – the impact on the other harms from a strategy overly focused on suppression would be disproportionate.

95. As both the nature of the Covid-19 crisis changed and the government's overall strategy evolved in response, so its approach to imposing and easing NPIs also evolved, from the initial measures introduced in March 2020 (including the 'lockdown') through to the lifting of the remaining legal measures on 18 April 2022.

Route Map

96. On 21 May 2020, the Scottish Government set out a Route Map (*Coronavirus (Covid-19) Scotland's route map through and out of the crisis*) which is provided: [KT2/032 – INQ000131072], with a statement for transitioning through and out of the emergency phase of the pandemic. This four-phase Route Map (which was subject to a number of updates over the following months) provided a forward plan for the easing of measures consistent with the principles set out in the Framework for Decision Making and subject to meeting conditions for future easing, based on six criteria set out by the WHO in its Director-General's opening remarks at the media briefing on Covid-19 on 13 April 2020. The six key criteria for easing restrictions were as follows:

- evidence shows that Covid-19 transmission is controlled
- sufficient public health and health system capacities are in place to identify, isolate, test and treat all cases and to trace and quarantine contacts
- outbreak risks are minimised in high vulnerability settings such as long-term care facilities (i.e. nursing homes, rehabilitative and mental health centres) and congregate settings
- preventative measures are established in workplaces with physical distancing, handwashing facilities and respiratory etiquette in place, and potentially thermal monitoring
- manage the risk of exporting and importing cases from communities with high risk of transmission
- communities have a voice, are informed, engaged and participatory in the transition.

97. By providing the forward plan set out in the Route Map, the Scottish Government was giving much needed information about the potential course of future measures, to enable planning by

people, businesses and other organisations (since the absence of the ability to plan ahead, albeit imperfectly, was itself harmful).

98. The ordering for the easing of measures set out in the Route Map was based on the principles and approach set out in the Framework for Decision Making, including 'four harms' considerations, as explained in the General Principles for Phasing document.
99. The Route Map was implemented from Phase 1 into Phase 3. Progress at each stage was agreed by the Scottish Cabinet. The six WHO criteria were used as conditions for progressing through the phases, to ensure that progress through the Route Map only occurred when it was appropriate to move forward.
100. It had been expected that further outbreaks of the virus, and the imposition of measures to manage those outbreaks, might disrupt and prolong progress through Phase 3 and into Phase 4. In the event, the resurgence of the virus in the autumn of 2020 became so severe that a different approach was required to provide more flexible management of measures than the linear approach to easing set out in the Route Map. This alternative approach, involving graduated 'protection levels', was set out in the Scottish Government's COVID-19 Strategic Framework in October 2020.
101. With the intention of providing a more flexible and clear approach to using NPIs to manage the pandemic in Scotland, an approach based on five 'protection levels' of measures (numbered Levels 0 to 4) was published in October 2020 in the first COVID-19 Strategic Framework document. This approach superseded bespoke arrangements for measures that had been applied, for example, in Aberdeen in August 2020 (in response to an outbreak focussed around hospitality settings) and then, from September 2020, across the Central Belt and later across the rest of the country, including what became known as a 'circuit break' or 'reset' in October 2020, as the virus regained hold in different degrees across much of Scotland.
102. The levels approach enabled measures to be tailored according to the state of the pandemic in different parts of Scotland, with Local Authority areas being seen as the principal building block for setting measures. Local authorities were allocated to different levels according to judgements based on a range of data and analysis. This added complexity to the alternative of a nationwide approach to measures, but it helped to ensure proportionality (and hence the lawfulness of measures) in each area. Otherwise, measures might have been imposed in areas (such as certain island communities) that were disproportionate given low prevalence of the virus there. Initial allocations of the 'protection levels' were made and applied in early November 2020.

Shortly afterwards, the WHO published interim guidance recommending a five-level (0 to 4) approach to setting NPIs in managing the pandemic.

103. Each level in the Scottish approach was designed to deliver a different degree of reduction in transmission of the virus (and a corresponding R number) by imposing a different degree of overall restriction across activities and settings. The effectiveness of each level in reducing transmission was recognised to be influenced by broader factors such as adherence and the inherent transmissibility of the virus (measured by R_0). Following early indications of success in suppressing the virus in November 2020, the advent of the much more transmissible B1.1.7 or Alpha variant (potentially coupled with increased social interaction during December 2020 in the run up to Christmas) undermined the effectiveness of the levels approach in reducing the R number to below 1. As a result, the virus surged in Scotland (and across the rest of the UK) to a new record high in positive cases in what remained a largely unvaccinated population. Given the estimated 70% increase in transmissibility of the Alpha variant, only Level 4 (or indeed some further restriction on top of that) was judged effective in suppressing the virus across much of Scotland.
104. Following the special arrangements agreed across the UK for Christmas 2020 (which were scaled back as a result of Alpha), most of Scotland was placed in a 'Level 4+ lockdown' (some island communities remained at Level 3). This seemed effective in suppressing the virus, in combination with increasing vaccination coverage following commencement of the vaccine programme towards the end of 2020.
105. As set out in the Strategic Framework Update of February 2021, as prevalence declined in the early part of 2021 and once a 'gateway condition' had been met that indicated it was safe to do so, the protection levels were gradually reduced across Scotland, guided by the local state of the pandemic. To reflect the higher transmissibility of the Alpha variant, the indicators used for allocating local authorities to different levels were tightened. During this phase the approach adopted was to ease Levels measures at a pace that kept the R number slightly below one, supported by increasing vaccination coverage and acquired immunity, so as to mitigate broader harms as much as possible, with an early priority on re-opening schools.
106. The process of de-escalating through the levels continued into summer 2021, during which Scotland – following a brief resurgence, most likely associated with the delayed Euro 2020 football championships and the Delta variant – moved down to Level 0.

107. As set out in the June 2021 Strategic Framework Update, conditional on having met a 'gateway condition' (that all adults over 40 had been offered 2 doses of the vaccine), Scotland moved 'beyond Level 0' to a set of ongoing 'Baseline Measures' (see below) which came into effect on 9 August 2021. These were designed to ensure that the health harm caused by the pandemic would continue to be suppressed as the vaccination programme continued to roll-out but greater normality was restored across the economy and broader society.

Baseline Measures

108. In August 2021, as Scotland progressed beyond the Levels approach to managing the pandemic, a number of protective 'baseline measures' were retained as they were considered both necessary and proportionate to achieve the strategic intent of suppressing the virus to a level consistent with alleviating the broader harms of the crisis. These baseline measures were legal requirements and comprised the following:

- face coverings were required in most indoor public settings and on public transport (unless exempt)
- hospitality and entertainment venues were required to collect the contact details of customers so that Test and Protect could continue to contact-trace positive cases
- businesses, services providers and places of worship were required to have regard to Scottish Government guidance about measures to minimise risk of exposure to Covid-19 relating to their business, service or premises
- capacity limits on stadia and live events
- the Covid Certification scheme (which was added in October 2021).

The Covid-19 Domestic Certification Scheme

109. Following the example of a number of other countries, Scotland introduced Covid-19 certification on 1 October 2021, enforceable shortly thereafter, as one of a set of baseline measures to help manage transmission once most other legal restrictions had been removed. To gain entry to a setting required to use certification, those attending had to be able to show they had been fully vaccinated with an approved vaccine (unless exempt) and that two weeks had passed for the vaccine to take effect.

110. In principle, certification enabled premises to be open but at reduced transmission risk by reducing (but not eliminating) the risk of infected people being present. Reducing transmission risk was beneficial in terms of reducing harm 1, while the premises were able to open when

otherwise they might have been judged too risky given the need to keep overall transmission of the virus under control. As stated in the Strategic Framework Update (November 2021) and in the policy note accompanying the regulations, the aims of the scheme were to:

- reduce the risk of transmission of coronavirus
- reduce the risk of serious illness and death thereby alleviating current and future pressure on the National Health Service
- allow higher risk settings to continue to operate as an alternative to closure or more restrictive measures
- increase vaccine uptake.

111. Certification was required at a limited number of settings that were considered to be higher transmission risk:

- late night premises with music, which serve alcohol at any time between midnight and 5am and have a designated place for dancing for customers
- indoor events (unseated) with 500 or more people
- outdoor events (unseated) with 4,000 or more people
- any event with more than 10,000 people.

112. Initially certification required evidence of vaccination. This was later amended to include a negative lateral flow device (LFD) test as an alternative to vaccination status (taking effect in December 2021). This alleviated some concerns for those who were vaccine hesitant. In January 2022, following an EU change to the definition of fully vaccinated and CMO advice, Ministers agree to add an expiry of 120 days since primary dose. A “booster” or a third dose was required to be defined as fully vaccinated. The status app was amended to take account of vaccination dates when displaying status.

113. The Scottish Government published two evidence papers on vaccine certification, provided: [KT2/033 – INQ000131041], [KT2/034 – INQ000131042]. The Scottish Government’s approach to Certification withstood a legal challenge in September 2021, prior to the scheme coming into force. The legal requirement for Certification was lifted at the end of February 2022.

Targeted and temporary response to the Omicron variant (Dec 2021 – Feb 2022)

114. During December 2021, the advent of the Omicron, and the prospect of a dominant variant with even higher transmissibility, led to the temporary imposition, in stages, of a number of targeted measures in Scotland. These included both the reintroduction of international travel measures

and stricter guidance on isolation, on social interaction and for particular settings. Various regulatory requirements were reintroduced for hospitality settings to reduce transmission and certain settings (e.g. those serving as dancing venues) were temporarily required to close. Restrictions on attendance capacity at large events were also reintroduced. Targeted financial support was provided. These measures were subsequently lifted in stages from January 2022.

The pace of easing and tightening restrictions

115. Importantly, the aim of suppressing the virus provided latitude for judgement on the pace of suppression and this pace mattered for the impacts on other harms. Imposing sets of measures with different stringencies would, other things being equal, suppress the virus at different paces. For example, a set of measures resulting in an R number of 0.6 would reduce transmission more quickly than a set of measures with an R number of 0.9. However, the tougher set of measures (resulting in R at 0.6) would impose a higher level of broader harm, at least in the short term. The Scottish Government considered options for easing using a 'four harms approach' alongside other considerations, and generally tended to follow a 'middle path' that was consistent with suppression of the virus but did not involve more severe options (e.g. a full 'lockdown') where avoidable because of the broader harms that would have incurred, even though the more severe options would have led to faster suppression. The initial 'lockdown' and the response to the Alpha variant after Christmas 2020 were exceptions to this general rule.
116. As the impacts of changes in measures were uncertain, a gap was recommended (e.g. three weeks) between changes in sets of measures to enable the impacts of the changes to be observed and potentially responded to. In practice, it was difficult to discern the impact of changing measures *per se* on transmission and on the R number, even after several weeks, as this would involve isolating this impact from other factors influencing the R number (such as changes in adherence, a more transmissible variant gaining dominance, or changes in population immunity). Therefore, while three-weekly reviews remained the norm and minimum requirement for reviewing regulations, the Scottish Government adopted a more flexible approach that could move more quickly than this where appropriate.
117. During periods of easing in 2020 and 2021, the Scottish Government generally used the WHO's six conditions as criteria for determining whether it was safe to ease measures and was sparing about setting future dates beyond the near term. The alternative of relying much more on pre-announcing longer-range dates for future easings might appear to support planning by people and organisations but carried the risk both that events would subsequently make those dates

unviable and that there would be significant pressure to stick with pre-announced dates, even when epidemiological conditions no longer supported them.

118. When the virus was resurging, speed of response could be key – as an earlier response could avoid the need for a tougher response later, particularly because transmission of the virus was characterised by exponential growth. For example, the Scottish Government sought to respond rapidly in early autumn 2020, first by implementing ‘bespoke’ measures in Aberdeen, then in the West of Scotland, and then across the country more generally, including through the October 2020 ‘reset’ or ‘circuit break’. The Levels approach, introduced in November 2020, was designed to allow rapid escalation of measures where the data indicated that this was required, and this happened in the wake of Christmas 2020. Following the move beyond the Levels approach, in late 2021, a further, targeted response was implemented in response to the Omicron variant.

119. The optimal timing of any tightening of measures remained an important decision, that could be supported by analysis, but ultimately involved judgement on account of the unavoidable uncertainties involved. Too rapid a move to introduce or tighten measures, when a resurgence would otherwise have been limited, would incur unnecessary economic and societal harm. Too slow a response might entail unnecessary health harm, including deaths, and the need for tougher measures later.

Other Factors affecting the use of NPIs

120. Over the course of the Covid-19 crisis, various factors changed that had a bearing on the use of NPIs in the management of the pandemic. For example, increasing vaccination coverage significantly reduced the average risk of serious disease and death, fundamentally rebalancing the four harms relating to the imposition of measures and leading to a pivot in the Scottish Government’s strategic intent. Increasing rates of naturally acquired immunity had a similar effect.

121. Other factors were also shifting. These included changing levels of compliance with or adherence to measures over time. They also included increasing transmissibility of the virus as successive variants with higher transmissibility came to dominate (over time, the dominant variant in Scotland moved from the early types to Alpha to Delta and to Omicron and its subvariants). These new variants fundamentally affected the efficacy of NPIs in reducing transmission. The availability of financial support, and indeed broader economic conditions such

as the strength of the labour market, also had a bearing on economic harm and hence the proportionality of measures that directly affected businesses.

122. Consistent with the approach and principles set out in the Framework for Decision Making, legal measures had to take account of epidemiological conditions. Given Scotland's varied geography and population density, epidemiological conditions differed at any given time across different parts of the country. Therefore, arguably, what was considered 'necessary and proportionate' and hence lawful by way of measures could in principle differ across the country. As a counter-argument, the ability of the virus to spread quickly across areas, particularly in the absence of travel measures, meant that the state of the pandemic would tend to 'even out' across the country over time, albeit that different areas would likely have relatively high or low prevalence compared to the national average at any given time.
123. In addition, one of the principles in the Framework for Decision Making concerned clarity: it was recognised that allowing local or regional variation in measures would reduce clarity and hence public understanding of the measures, which was considered important for maintaining adherence. A sense of national solidarity with measures might similarly be impaired by geographical variation, further reducing adherence, but measures applied nationally might not have 'felt fair' in areas of lower prevalence. And if adherence with measures declined then tougher measures would be required to achieve a given reduction in transmission, other things being equal. Therefore judgement was needed as to whether it was more appropriate to pursue a national approach or a locally tailored approach, given the state of the pandemic.
124. In practice, Scotland pursued a nationwide approach during the Route Map easings from the initial lockdown, and thereafter deployed a geographically tailored approach until the easing of restrictions on a nationwide basis in April 2021. As described above, at first this was on a bespoke basis in response to local and regional outbreaks in autumn 2020. From November 2020, clearly defined Levels or sets of measures were applied, to support public understanding about which measures were in force locally. In the weeks after Christmas 2020, much of Scotland moved to the same level (4+) but a limited degree of geographical variation was maintained (e.g. in certain island communities, which remained at Level 3). Under the levels approach, measures were applied at a local authority level, broadly consistent with technical advice from the WHO. The epidemiological conditions in each local authority were assessed to inform decisions about allocating local authorities to different levels. It was acknowledged that this approach was imperfect, for example creating 'border issues' where the boundaries of local authorities did not correspond well with economic or social travel patterns. This drawback was

arguably outweighed, however, by the wider benefits of the locally tailored approach and people's understanding of local authorities as a defined area.

The process of decision-making

125. Decisions on whether any legal restrictions or requirements should be applied were made by Cabinet – or on occasion, by the First Minister under a specific delegation from Cabinet. On each occasion, the Deputy First Minister would present a paper to Cabinet, setting out the issues and relevant analysis, and (usually, but not always) making specific recommendations.

126. The formal preparation of a draft Cabinet paper typically began on the Friday before Cabinet (Cabinet was normally on a Tuesday). This is when the 'Four Harms Group' would meet, to consider the current and potential future state of the epidemic, and any measures under consideration (including any legal restrictions or requirements). Information relevant to the four harms and the state of the pandemic was typically prepared in the days leading up to the meeting on the Friday.

127. It was a principle of the Scottish Government's approach that the full range of these harms should be considered when making decisions on any legal restrictions and requirements. This is because different options concerning the application of restrictions, or combinations of restrictions, would affect the four harms differently. Evidence and analysis could provide some assistance in understanding the nature and scale of the impacts; however, a degree of judgement was ultimately required in deciding which restrictions to apply, and when. The impacts on fundamental rights of any legal measures were also considered.

128. Meetings of the Four Harms Group would bring together senior officials and advisers who between them could speak to the full range of harms, along with relevant policy leads, analysts, and representatives of Public Health Scotland and COSLA.

129. Agenda items would typically include consideration of the following:

- draft notes of the previous meeting
- the current state of the epidemic
- modelling the future state of the epidemic
- impacts across the 'Four Harms'
- any measures proposed or due for review.

130. Papers on any specific measures proposed would generally be shared with group members in advance of the meeting.
131. Based on the group's discussions, the Chair would normally sum up the situation faced, and the key issues Ministers would need to consider in taking any proposals to Cabinet. A detailed draft note of the meeting would also be prepared and considered for approval at a subsequent meeting.
132. It should be noted that the Four Harms Group was not itself a decision-making group: it existed to enable the development of well-rounded material to support Ministers' decision-making in Cabinet.
133. Based on the group's discussions, including the Chair's summation, officials in Covid Co-ordination Directorate would begin to prepare a draft Cabinet paper, in the name of the Deputy First Minister. In doing so, officials would have regard to the official Scottish Government guidance on Cabinet decision-making – recognising that the fast-moving nature of decision-making on the epidemic made some of the set timescales for internal consultation inappropriate. Draft papers would also be developed in the context of the Scottish Government's Strategic Framework for managing Covid-19, as frequently updated.
134. Such a draft paper would normally include:
- evidence and analysis on the state of the epidemic and its impacts, on future modelling, and advice from the National Incident Management Team
 - detailed advice on any measures proposed, and/or a review of existing measures
 - an account of any specific legal issues arising
 - an account of any Parliamentary proceedings (such as the introduction of new Regulations) which might be required.
135. Detailed evidence and background would typically be included within Annexes to the draft paper.
136. The specifics of the process involved in preparing a draft paper would vary in detail, but would generally involve the following:
- engagement (such as the sharing of draft material) with a wide range of policy, clinical, analytical and legal colleagues, for their comments and further contributions
 - sharing initial versions of a draft paper with lead Ministers (typically, the First Minister and Deputy First Minister) to allow them to provide a steer on, for example, any

measures being considered for proposal as options to Cabinet and how they were set out in the draft paper

- on occasion, focussed meetings with lead Ministers to discuss the overall state of the epidemic, and the proposals under consideration in the draft Cabinet paper. In these situations, Ministers would often give a steer on issues which should be covered in the draft paper, and the potential proposals they wished to consider. Such meetings would conventionally be referred to as 'Gold' meetings and would typically take place over the weekend or on the Monday immediately before Cabinet. The meetings' conclusions were normally recorded, and/or were fed directly into the ongoing preparation of the draft Cabinet paper
- near final drafts of Cabinet papers would be shared with legal colleagues before submission to Ministers (typically on the Monday afternoon), to assure the legal robustness of the text
- final drafts would be submitted to Ministers (typically the Deputy First Minister and First Minister) for their comments and, once content, their clearance
- the final paper in the name of the Deputy First Minister would then be issued to Cabinet by the Cabinet Secretariat, along with any supporting material. Individual Cabinet Secretaries would typically then receive specific briefing from portfolio officials
- the Deputy First Minister would introduce the paper to Cabinet and summarise pertinent issues.

137. Discussions and decisions made within Cabinet would be recorded by Cabinet Secretariat in the official Cabinet minutes. Decisions would typically be announced to Parliament by the First Minister later that afternoon.

138. On occasion, Cabinet would grant the First Minister the authority to make decisions subsequent to Cabinet, in association with other lead Ministers and advisers (for example, when further relevant data was expected to become available after Cabinet had met). The precise terms of the First Minister's statement to Parliament were also routinely delegated to her.

139. As outlined in our Module 1 response, when the scale or complexity of an emergency is such that some degree of central government co-ordination or support becomes necessary, the Scottish Government will activate its emergency response arrangements through SGoRR (Scottish Government Resilience Room). The precise role of SGoRR will vary depending on the nature of the emergency. See Chapter 5 of *'Preparing Scotland: Scottish Guidance on Resilience'* (2016), provided: [KT2/035 – INQ000102911]. It is important to note that SGoRR is

not a decision-making group. A timeline of SGoRR meetings has been provided as part of the Tranche 6 return to the Scottish Covid-19 Inquiry.

The process for making Covid-19 Regulations for NPIs

140. The Module 2A DG Strategy and External Affairs (Legislation) corporate statement provided 23 June 2023 sets out detailed information about legislation relating to Covid-19 including regulations made by the Scottish Ministers used their powers in Schedule 19 of the Coronavirus Act 2020 to put in place restrictions and requirements for individuals and organisations. That statement also sets out the approach taken to the provision of guidance to supplement the regulations.
141. Following decisions made at Cabinet, where regulations were required to implement decisions, a Scottish Statutory Instrument would be made. The enabling power under which most regulations containing NPIs were made allowed the use of the "made affirmative" procedure during situations of urgency. This allowed regulations to be made before being laid in the Scottish Parliament. Without this ability, 28 days would have to have been allowed for parliamentary scrutiny before changes to NPIs, including introducing them, modifying them or removing them, could come into force. Regulations were accompanied by online public-facing guidance which provided advice on how to comply with the Regulations, and wider, supplementary advice on behaviours to limit the spread of Coronavirus. This was updated in parallel with changes to Regulations. Sectoral or thematic guidance e.g. to the retail sector was also published giving more detailed advice, appropriate to specific settings, on compliance with the regulations, and on other measures to contain the spread of Coronavirus. The suite of guidance notes developed from April 2020 onwards.
142. In November 2020, the Parliamentary Bureau of the Scottish Parliament agreed new arrangements for scrutiny of regulations implementing the Scottish Government's Strategic Framework, i.e. regulations amending the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020. Those arrangements aimed to strike a balance between the need for Scottish Ministers to act swiftly and the need to provide Parliament with an opportunity to consider measures before they took effect.
143. Where regulations were to be made following the made affirmative procedure, a Ministerial statement setting out the changes to Parliament was normally made on a Tuesday afternoon following the Cabinet meeting that morning. Thereafter, draft regulations and a policy note would be provided to Committee Clerks and the Presiding Officer on Wednesday by 4pm. The

Committee usually met on Thursday morning and would consider the draft regulations before they came into force. Parliament was informed of the making of the regulations by a Government Inspired Question. Thereafter, the regulations followed normal Parliamentary procedures and were subject to approval by Parliament within 28 days of being made. These arrangements continued to be followed when the Local Levels Regulations were replaced by the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021. On a limited number of occasions, regulations were made with an urgency that required them to come into force before their publication on legislation.gov.uk was possible. In these instances, regulations were published on the Scottish Government website on or before coming into force, to ensure public awareness of their provisions.

Reporting to the Scottish Parliament about the operation of provisions within legislation

144. Section 15 of the Coronavirus (Scotland) Act 2020 and section 12 of the Coronavirus (Scotland) (No 2) Act 2020 required the Scottish Government to review and report on the operation of the provisions in Part 1 of those Acts every two months. Ministers regularly received advice about coronavirus related legislation for the purpose of the two-monthly reports on Coronavirus legislation. These reports were required to be laid in Parliament and published within 14 days of the end of the two-month reporting period. The Coronavirus Act 2020 did not contain equivalent reporting requirements for the Devolved Administrations, however, the Scottish Government put in place its own reporting arrangements on the provisions in the UK Act for which the Scottish Parliament gave legislative consent. These arrangements were consistent with the requirements established within the Scottish Acts. In addition, section 14 of the second Scottish Act required Scottish Ministers to report on SSIs made by Scottish Ministers where the main purpose relates to coronavirus. This provision did not apply to SSIs made by Scottish Ministers under the first or second Scottish Acts or the UK Act. The reports included the name of the SSI, the powers under which it was made, the parliamentary procedure it was subject to, the period for which it has effect, its then current status and a statement that Ministers were satisfied that the status was appropriate. Advice was provided to portfolio ministers in relation to provisions and SSIs in the report for which they had portfolio responsibility. That advice covered the status of each provision and SSI at the end of the relevant two-month reporting period. Following confirmation from portfolio ministers that they were content with the status of their provisions, advice was provided to the DFM in relation to the entire report.
145. An additional, one-off report was published in September 2021 to meet the requirements of the Coronavirus (Extension and Expiry) (Scotland) Act 2021. Sections 5 and 7 of that Act required Scottish Ministers to report on its response to the Covid-19 pandemic, including measures

relating to the holding of marriage ceremonies and civil partnerships, support for businesses and a range of other policy areas. The Act required Scottish Ministers to lay before the Scottish Parliament a report on these topics no later than one month after Royal Assent.

Approach to the enforcement of alleged breaches of Covid-19 restrictions

146. Throughout the Covid-19 Pandemic, the Scottish Government made regulations in order to reduce the spread of coronavirus. The legislation contained powers for Scottish police officers that enabled them to help protect public health by ensuring that the restrictions in place across the country were enforceable and in turn, being complied with. The Scottish Government engaged with Police Scotland, other enforcement agencies and other key partners from the justice sector throughout the development of new legislation to understand the need for additional powers and to ensure that they were justified and proportionate. Additionally, the Scottish Government regularly engaged with Police Scotland to discuss patterns and trends of breaches for particular offences. The role of local authority officers in the enforcement of regulations is further outlined in the Module 2A DG Strategy and External Affairs (Legislation) corporate statement and the Module 2A Education and Justice (Justice) corporate statement both provided on 23 June 2023.

147. In particular subjects for discussion included:

- public health measures at international borders order and their enforcement in Scotland.
- fixed penalty notices and whether the fines should be increased under the Health Protection Regulations
- power of entry to a private dwelling
- restrictions on travel within Scotland and between Scotland and other parts of the UK and the wider Common Travel Area (Ireland, the Channel Islands and the Isle of Man).
- the mass gathering of Rangers fans on 15 May 2021
- the “Kenmure Street protests” (a protest in Glasgow in May 2021 regarding the detention of two individuals for alleged immigration violations)
- potential amendment to regulations on parties/ gatherings and increasing police powers for COP 26.

Meetings held between the Scottish Government and UK Government regarding legislation

148. Legislation was discussed by the Scottish Government and the UK Government at official and ministerial level.

149. Liaison took place between ministers and officials of Scottish Government and those of other UK Governments on a routine basis in order to discuss and coordinate all aspects of the response to the Pandemic. These did not focus exclusively on legislation, but differences and alignment of legislation across the four Nations was a constant theme of the discussions. The range of liaison mechanisms is described in more detail earlier in this statement.

Repatriation

150. As consular matters are the responsibility of the Foreign and Commonwealth Office (FCO, which merged with the Department for International Development in September 2020 to become the Foreign, Commonwealth and Development Office (FCDO)), the Scottish Government did not take decisions during the Covid-19 pandemic on the repatriation of UK nationals. However, as the Scottish Government and Scottish Government Ministers were contacted by those who normally reside in Scotland about repatriation for themselves, for family and friends, or by MSPs about individuals overseas, the Scottish Government sought to provide publicly available information to those individuals (sourced from UK Government websites or the Twitter feed of the local British Embassy/High Commission) and to pass on their cases to the FCDO case handlers who were dealing with cases raised by MPs and MSPs. Occasionally, Scottish Government Ministers would raise a specific case directly with an FCDO Minister or mention the need for better consular assistance as regards repatriation during meetings with FCDO Ministers.

151. The Scottish Government kept a record of any actions and correspondence and any notes of meetings or letters where repatriation or consular matters were raised with FCDO Ministers. These records have been retained.

Managing the importation risk

152. The fifth WHO criterion (as set out in paragraph 96) was: "Manage the risk of exporting and importing cases from communities with high risks of transmission". Importation of new chains of infection of the dominant strain of the virus, or of new and potentially more infectious strains or strains that might undermine the effectiveness of vaccines, could occur as a result of international travellers from overseas entering Scotland directly by air or sea or of travellers arriving directly in Scotland from other parts of the Common Travel Area (England, Wales, Northern Ireland, Ireland, the Channel Islands and the Isle of Man – the "CTA"), or indirectly via the land border with England. Minimising this risk was therefore an important element of the strategy as domestic restrictions were relaxed following the original lockdown, on the same

principle as the use of travel restrictions within Scotland with the aim of reducing the risk of importing the virus from areas with high levels of cases to those with lower ones.

153. Given, for example, the need for cross-border movements of food, medical and other supplies it would never have been practicable to impose a complete ban on travel to and from Scotland, or to and from Great Britain or the UK. In terms of overall strategy, even if Scotland had succeeded in completely eliminating the virus at a particular time, essential travel to and from Scotland would enable the virus, if still circulating elsewhere, to be reintroduced to Scotland. The implication of this is that a 'zero Covid' strategy in Scotland would ultimately have been unlikely to be sustainable. This would particularly have been the case if the UK Government were not also pursuing such a strategy for England, given that complete closure of the land border with England was never a feasible proposition because of the volume of freight traffic crossing the border daily.

154. What the Scottish Government did do, like other governments elsewhere in the UK and beyond, was to put in place measures to limit non-essential travel to and from areas of high prevalence in Scotland and elsewhere.

155. Intra-Scotland Travel Restrictions. Within Scotland, at times where restrictions were in place but not full 'lockdown', these took the form of guidance relating to specific areas during localised outbreaks in the summer and autumn of 2020, and then from late 2020 to mid-2021 national guidance and then regulations restricting non-essential travel between areas of Scotland that were subject to different levels of restrictions. This approach was necessary to complement the geographically variable "levels" approach to NPIs within Scotland. Travel was of course never banned completely, but rather travel was permitted with a reasonable excuse and the regulations set out a range of examples of such reasonable excuses.

156. Restrictions on travel between Scotland and other areas of the CTA. Restrictions were also applied to travel to and from other parts of the CTA, at times applying to the whole territory of one or more of the other CTA administrations and at times to specific parts thereof. Other CTA administrations restricted travel to and from Scotland or parts of Scotland. The four UK nations collaborated on guidance to the public on the interaction of these evolving regimes. The Scottish Government published comprehensive guidance on its website and drew attention to the rules and guidance in its public information campaigns.

157. Detailed explanations of the travel restrictions policy, provided: [KT2/036 – INQ000131044], and its intended impact were published in November 2020. This includes an Equality Impact

Assessment, provided: [KT2/037 – INQ000131045], Business and Regulatory Impact Assessment, provided: [KT2/038 – INQ000131046], and Islands Assessment Impact, provided: [KT2/039 – INQ000131047]. The policy note, provided [KT2/040 – INQ000131048], and accompanying impact assessments were refreshed in April 2021.

158. Overseas travel. Although there were challenges in managing international travel restrictions across the four nations, there was a broad level of consistency in their application over the period they were in force. Particularly earlier in the pandemic, Scotland at times adopted a more restrictive stance on foreign travel than the UK Government did for England, for example easing restrictions on travellers from Spain after the UK Government had done so for England or Scotland's stricter approach to quarantine hotels (known in Scotland as "Managed Isolation") when it was first introduced. In those cases, international passengers were able to circumvent tougher restrictions in Scotland by travelling via England. Where this happened, it would have reduced the efficacy of Scotland's restrictions to a degree. However, the tougher stance in Scotland, based on feedback from the aviation sector, had a negative impact on passenger numbers travelling directly to Scotland so would still likely have served to *reduce* importation and hence transmission, even if some lower level of importation continued from international travellers entering Scotland via England or elsewhere in the CTA.

"Divergence"

159. Earlier parts of this statement set out the responsibilities, and democratic accountability, of the Scottish Government for the health service, public health and a wide range of public services that were at the core of the response to the pandemic. NPIs are an essential part of that suite of potential interventions. It was the responsibility of the Scottish Ministers to decide on policy on NPIs and to be accountable to the Scottish Parliament for that. There should not be an implicit understanding that the UK Government's approach for England was the 'orthodox' approach from which other parts of the UK 'diverged'. It was simply another approach, resulting from the application of judgement to the facts and circumstances in England. Nor was there a uniform approach to NPIs in each of England, Wales and Scotland. Rather, for significant periods of the pandemic, all three countries applied different levels of restrictions within their territories to reflect the state of the pandemic in different areas.

160. In reflecting on why NPI decisions were made by Scotland, it is, however, useful to consider England (i.e. the decisions of the UK Government), Wales and Northern Ireland as comparators.

161. The similarity in context faced by the four governments in the UK help to explain why many decisions, even if taken separately, might appear at a distance to have been broadly aligned with minor differences around timings etc. Closer inspection would, however, reveal a number of important differences. The broad similarity in epidemiological conditions across Great Britain (and to a lesser extent Northern Ireland, which was perhaps epidemiologically closer to Ireland), and the Scottish Government's understanding of them through the common use of SAGE etc, would be one factor tending towards broad alignment of decisions. Another would be the broad similarity in the pace and extent of vaccine roll-out across the UK. A further factor was the availability of financial support to mitigate the negative impact of restrictions (e.g. on workers and firms). As some of the key elements of this funding were reserved and applied across the UK, such as the so-called furlough scheme, this provided a further driver of broad alignment of NPIs. For example, there were occasions when the Scottish Government stated that it would have wanted to keep restrictions in place longer but felt unable to do so because of the withdrawal of furlough funding and the disproportionate harm that would therefore be incurred.
162. This gave rise to an important disparity: the UK Government would be inclined to make funding such as the furlough scheme available across the UK when it judged that the epidemiological situation merited it, based largely on its assessment of conditions in England. In contrast, if the Scottish Government considered that the epidemiological situation in Scotland merited furlough funding when it was not in place (e.g. because prevalence were significantly higher in Scotland than in England) then it did not have the financial means to do so.
163. Notwithstanding these contextual similarities, in principle, there are a number of reasons why there could have been different optimal NPI approaches in Scotland (by the Scottish Government) and in England (by the UK Government).
164. Firstly, the population health characteristics and demographics of the two countries' populations differ. In crude terms, Scotland has an older, sicker population, one that was therefore more susceptible to Covid-19 harm given that the risks of Covid-19 were considered to increase with age and certain co-morbidities. In other words, a given prevalence rate of the virus in both Scotland and England should have led, other things being equal, to a higher Covid-19 mortality rate in Scotland than in England. In principle, this factor should have had a bearing on how the harms of Covid-19 were weighed against the harms incurred by NPIs in making decisions about NPIs and could reasonably have led to the Scottish Government taking a slightly more restrictive stance on NPIs (as there was potentially more harm for those NPIs to mitigate). In other words, the 'harms calculus' faced by the different countries was different.

165. As an example of different epidemiological conditions, by mid-2021 the data seemed to show that fewer people in Scotland pro rata had been infected with the virus than in England (likely in part because of the different approaches to NPIs adopted hitherto). This implied that the Scottish population would have less infection-acquired immunity than would have been the case in England and would therefore be more susceptible to an increase in prevalence from reduced restrictions, other things being equal. Indeed, arguably this may explain a surge in infections during the Euro Football Championships in June 2021 seen in Scotland but not to a similar extent in England, even though both countries were participating. The difference in cumulative prevalence at this stage of the pandemic arguably justified a longer time-frame for scaling back NPIs in Scotland than in England over that summer.
166. At the same time, Scottish Ministers were aware of the potential benefits of alignment of certain NPI positions, particularly from the perspective of public understanding, which was recognised to be important for positively influencing behaviour to reduce transmission. This was particularly evident in the cross-border alignment of plans for NPIs around Christmas 2020, even though that aligned approach was eventually derailed by the surge in infections caused by the Alpha variant in late 2020.
167. Through the liaison mechanisms described earlier in this statement, each of the four national governments was aware of the others' NPI responses on an ongoing basis, facilitating a degree of alignment where that seemed appropriate. This was also happening more broadly at an international level, where other countries' responses were well reported. The WHO and other international institutions were also active in providing advice, which may have influenced greater international alignment, though flexing to different epidemiological conditions across different countries at any given time.
168. Contemporary polling data indicated that the Scottish Government retained more public trust in its approach to managing the pandemic than the UK Government. This polling is covered in more detail in the Module 2A corporate statement provided 23 June 2023 by DG Corporate. This matters to the extent that it enabled Scotland to maintain higher adherence to NPIs and hence higher NPI effectiveness and reduced overall harm. In 2021, for example, this may have meant that a particular NPI was more effective in Scotland than in England, because it retained higher adherence. This may have been a factor in the Scottish Government continuing to deploy certain NPIs in Scotland after the UKG had withdrawn them in England due to difference in the relative effectiveness of those NPIs.

169. Scotland is, self-evidently, a much smaller country in population terms than England and has around a tenth of the number of local authorities. This had a bearing on how the different 'levels' of Covid-19 restrictions were implemented in Scotland in late 2020 compared to the 'tiers' in England. In Scotland, the Cabinet was able regularly to set and adjust the level of restrictions applied to, and in the case of authorities with relatively remote island communities, within each local authority in Scotland, and Cabinet Secretaries (senior ministers) were able to engage with the leaders of those local authorities in relation to the level of NPIs set for each respectively. This is likely to have been a factor in the different experience of operating a levels/tiers system north and south of the border. The UK Government ended the tiered system in England considerably before Scotland moved to Level 0 and then beyond the levels system.
170. Different decisions regarding NPIs are also likely to have reflected differences in policy approaches between the Scottish Government and UK Government. Ministerial judgement was required in making decisions, once the relevant evidence and analysis had been presented. This was particularly the case when making decisions that essentially traded off different harms (as decisions concerning the use of NPIs typically did). In making their judgements, ministers in different governments may have applied different implicit weightings to the available evidence, and taken account of different facts and circumstances within their respective jurisdiction.
171. Similarly, given that the exercise of judgement in decision-making was key, risk appetite was an element in that judgement, and different decision-makers may have held different risk appetites that translated into their decisions on NPIs (such as, how much deteriorating data they needed to see before they would agree to increase restrictions, or, how much improvement in epidemiological conditions they considered necessary before easing restrictions).
172. Different decisions on NPIs will also have reflected different strategic approaches. For example, one approach was to put a greater emphasis on lifting restrictions on pre-announced dates in an attempt to provide greater confidence about the future management of the pandemic (an approach that might arguably help reduce social and economic harm by enabling people and organisations to plan ahead with greater confidence, assuming the planned dates were then maintained). An alternative approach, to which the Scottish Government was more inclined, was to put greater emphasis on making the easing of restrictions more conditional on future epidemiological conditions (which might arguably reduce Covid-19 harm, but at the expense of providing less confidence over future dates for easing restrictions). Strategic approaches will have differed in other ways too. For example, the Scottish Government sought to incorporate its position on NPIs within a broader, published Strategic Framework; other governments will have presented their approaches in different ways.

173. For much of the pandemic, the Scottish Government would use the term 'physical distancing' where the UK Government used "social distancing". The Scottish Government preferred this term to make it clear that we were expecting or requiring people to maintain certain physical distances between each other both because this was a literally clearer description of what was needed, and because reducing social engagement (a possible interpretation of social distancing) could have negative impacts during a period when loneliness and mental health were a serious concern and social engagement could still be maintained, consistent with guidance and regulations applying at the time.

174. The WHO suggested using the term "physical distancing" instead of "social distancing" because it is physical separation which prevents transmission; people can remain socially connected by meeting outdoors at a safe distance (when there is no stay-at-home order), and by meeting via technology.

175. The term "social distancing" might also be interpreted in a broader way that physical distancing would not normally be, namely to cover the range of NPIs that reduce human interaction (such as cancelling mass gatherings or limiting the number of people who could meet at a given time/place).

176. Over the course of the pandemic, the Scottish Government and the UK Government adjusted required distances for physical distancing, such that different requirements often applied north and south of the border both generally and in particular settings.

Lessons Learned

177. During the course of the pandemic, the Scottish Government sought to improve its analysis of Covid-19 on an ongoing basis through analysis of both the epidemiology and the impacts of measures including NPIs.

178. When estimates for the impact of NPIs were improved (for example, based on published international studies or through SAGE analysis), they were factored into the modelling of the pandemic and potential responses, to aid decision-making.

179. In addition, the Scottish Government conducted regular polling to gauge social attitudes to the continuing use of NPIs, including on compliance/adherence. This fed into consideration of the

effective deployment of NPIs. This polling is covered in more detail in the Module 2A corporate statement provided 23 June 2023 by DG Corporate.

180. The Scottish Government also conducted various impact assessments concerning its policies (including the use of NPIs) over the course of pandemic, providing material to draw on in developing policy responses. For example, reflection on the impact of school closures on children's education and mental health led to a prioritisation of keeping schools open over other amenities and services.

181. Drawing on the experience of arrangements put in place during the Covid-19 pandemic, the Coronavirus (Recovery and Reform) (Scotland) Act 2022 updated the statute book to embed reforms in Scotland's public services and justice system that have delivered improvements for service users and improved efficiency. Key aspects of the public health protection powers and educational continuity powers in the Act are subject to a parliamentary vote as part of a 'gateway' mechanism to ensure the powers can only be used with parliamentary authorisation in the event of a future public health threat.

182. A consultation on the Covid Recovery and Reform Bill ran for 12 weeks between 17 August and 9 November 2021. The Government aimed to review the impact of Covid-19 on the Scottish statute book, removing measures no longer needed in order to respond to the pandemic whilst keeping those where there is demonstrable benefit to the people of Scotland. Consultation responses received (where permission to publish has been given) were published, and an analysis of responses published on 26 January 2022, provided: [KT2/041 – INQ000131049].

183. The Scottish Government has also established a statutory inquiry under the Inquiries Act to examine the handling to the Covid-19 pandemic in Scotland. The Deputy First Minister announced the establishment of the Inquiry in the Scottish Parliament on 14 December 2021 [KT2/042 – INQ000131049]. He explained that the purpose of the Inquiry was two-fold: to provide scrutiny and answers to the questions that people have about how the pandemic has been handled in Scotland; and to learn lessons to be as ready as possible to respond to future pandemics.

Key Decisions

184. Timelines of the Key Publications and Administrative Decisions timeline are provided [KT2/043 – INQ000131043]. A timeline of key political decisions is also provided [KT2/044 – INQ000131055].

185. A complete list of Ministers, Special Advisors and senior civil servants for the timescale of 21 January to 30 April 2022 is provided [KT2/045 - INQ000131090].

186. A list of coronavirus legislation is provided [KT2/046 - INQ000131091].

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: 22 June 2023