

**Witness Name: Ken Thomson**  
**Statement No.: 3**  
**Exhibits: KT3**  
**Dated: 23 June 2023**

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

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

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**In relation to the issues raised by the Rule 9 notice: M2A-EJD-02 dated 10 March 2023 served on the Scottish Government, in connection with Module 2A, the Director-General Strategy and External Affairs will say as follows: -**

**Introduction**

This statement is one of a suite provided for Module 2A of the UK Covid-19 Inquiry and these should be considered collectively, with particular regard to the Module 2/2A Director General (DG) Strategy and External Affairs statement provided to the Inquiry on 23 June 2023 and the Module 2/2A DG Education and Justice (Justice) statement provided to the Inquiry on 23 June 2023.

**General information about Covid-19 legislation**

1. This statement addresses the enactment and enforcement of all primary legislation and regulations in Scotland relating to Covid-19 between the beginning of January 2020 and 30 April 2022. Work on Covid-19 legislation was carried out across a number of Scottish Government Directorates. This statement gives a cross-government perspective, reflecting the co-ordinating role played by teams in the Constitution and External Affairs Directorate General, which was renamed Strategy and External Affairs in February 2022.
2. The Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023 includes a summary description of legislative procedures in the Scottish Parliament,

including for primary legislation (Bills that become Acts of the Scottish Parliament following Royal Assent), for secondary legislation (Scottish Statutory Instruments (SSIs) made by the Scottish Ministers), and for the Parliament to give legislative consent under the Sewel Convention to primary legislation by the UK Parliament relating to devolved matters or altering the competence of the Scottish Parliament or the Scottish Ministers. Most Covid-19 legislation in Scotland during the pandemic took the form of secondary legislation – regulations – subject to procedure in the Scottish Parliament. The Scottish Parliament also passed several Bills and gave legislative consent to the Coronavirus Act 2020 passed by the UK Parliament. Further detail is provided below.

3. Timelines of the Key Publications and Administrative Decisions [KT3/001-INQ000131057], a timeline of key political decisions [KT3/002-INQ000131055], a complete list of Ministers, Special Advisors and senior civil servants for the timescale of 21 January to 30 April 2022 [KT3/003-INQ000131090] and a list of Covid-19 legislation [KT3/004-INQ000131091] have been previously provided as exhibits to the Inquiry with the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023, and are not reproduced here.

### **Primary legislation**

4. Three principal Acts were put in place early in the pandemic: the Coronavirus Act 2020, the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020.

### **Coronavirus Act 2020**

5. The Coronavirus Act 2020 was an Act of the UK Parliament. This Act made provision that applied throughout the UK and included some specific provisions that applied only in Scotland. Key among the Scottish provisions was the power for Scottish Ministers to make health protection regulations (section 49 and schedule 19). 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. *The Legislative Consent Memorandum* was previously provided to the Inquiry: [KT3/005-INQ000131052].
6. *The Four Nations Covid-19 Action Plan*, previously provided: [KT3/006-INQ000131020], was published in March 2020 and outlined the collective approach to help prevent the spread of the outbreak and combat the impact and consequences of Covid-19. This contained as one of its elements emergency powers available for a limited time. As outlined in the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023, the Scottish

Ministers contributed to development of the Action Plan while retaining responsibility for the exercise of their own powers and responsibilities in relation to public health and related matters.

7. The Coronavirus Bill was led by the UK Department of Health and Social Care (DHSC). The Scottish Government worked closely with the UK Government and other devolved administrations on development of the Bill. The Bill's development began as part of four nations pandemic flu planning work which was led jointly by DHSC and the Cabinet Office working with devolved administrations and other UK Government departments, and then became part of the response to Covid-19.
8. The development of the Bill was discussed and agreed between the four administrations at Ministerial level. As part of the drafting and preparation of the Bill, Scottish Government officials led on instructing Scottish provisions that were within the legislative competence of the Scottish Parliament and also worked with UK Government officials on other provisions that applied to Scotland. Any Bill drafting process is iterative and officials had sight of, and commented on, draft provisions specific to Scotland as those progressed.
9. Provisions set out in Part 2 of the Act (final and technical provisions) were instructed by the UK Government. The Scottish Government made clear throughout the drafting process that it was necessary for Scottish Ministers to have the same controls as UK Ministers to commence, suspend and revive provisions that extended to Scotland and fell within the competence of the Scottish Parliament, and this is reflected in the arrangements for commencement, suspension and alteration of expiry date set out in Part 2.
10. The Scottish Government provided input to documents prepared by the UK Government in connection with the Bill, including to the summary of impacts. The Scottish Government also provided input to the work coordinated by DHSC in summer 2020 to refresh and supplement the *Public Sector Equality Duty* assessment prepared for the Bill. The supplemented version is provided [KT3/007-INQ000183060]. This input was in relation to the Scotland-specific provisions in the Act and the UK-wide provisions to the extent they applied to Scotland.
11. The Bill received Royal Assent on 25 March 2020. As it made provision about devolved matters in Scotland and about the executive competence of the Scottish Ministers, the legislative consent of the Scottish Parliament was required under the Sewel Convention, as explained in the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023. The Scottish Parliament gave its consent to the provisions in the Bill as far as they relate to devolved matters and powers for the Scottish Ministers on 24 March 2020. Details of the

*Legislative Consent Memorandum (LCM)* from the Scottish Government that was considered by the Scottish Parliament are provided [KT3/005-INQ000131052]. The LCM for the Bill was lodged on 19 March, scrutinised in Committee on the morning of 24 March and debated on the afternoon of 24 March.

### Coronavirus (Scotland) Act 2020

12. The Coronavirus (Scotland) Act 2020 was the first of several pieces of Scotland-specific primary legislation passed by the Scottish Parliament to respond to the emergency situation caused by the Covid-19 pandemic. The Bill contained modifications of the law to help public services in Scotland continue to operate during this emergency situation. It also included provisions to support businesses and users of public services. The Act included a broad range of provisions, with a focus on ensuring that public services could continue to operate effectively while they were under pressure from the pandemic and while the population was either required by law or encouraged not to leave their home or meet others unnecessarily. For example, children's hearings were permitted to consist of fewer than three panel members, the requirement for children's hearings to consist of both male and female panel members was disapplied and requirements for personal appearance at children's hearings were suspended. Requirements for physical attendance at court or tribunal buildings were suspended and time limits applicable to criminal proceedings were extended. Other provisions included temporary protections for debtors, extensions to the notice period for evictions, modification of the law relating to vulnerable adults, modification of alcohol licensing law and provisions relating to the functions of public bodies such as licensing requirements, freedom of information legislation, requirements in relation to publication and laying of reports and the holding of local authority meetings.

13. The Bill was introduced on 1 April 2020. The Scottish Parliament agreed that the Bill should be treated as an Emergency Bill at the meeting of the Scottish Parliament on the same date. An Emergency Bill is a Government Bill that needs to be enacted more quickly than the rules in the Parliament's Standing Orders otherwise allow. Emergency Bill procedure is provided for at Rule 9.21 of the *Parliament's Standing Orders* [KT3/008-INQ000183061]. If the Scottish Parliament approves a motion to progress a Bill as an Emergency Bill, unless the Scottish Parliament decides otherwise on a motion of the Parliamentary Bureau, Stages 1 to 3 of an Emergency Bill are taken on the same day. The time available for each of the stages of an Emergency Bill, and for debates at each of those stages, are decided by the Parliament on a motion of the Parliamentary Bureau. Stages 1 to 3 of this Bill were taken on the same day and Stage 2 was taken by a Committee of the Whole Parliament. The Bill, as passed by the Scottish Parliament on 1 April 2020, became an Act on 6 April 2020. Details of the Bill, including the Policy

Memorandum, Explanatory Notes, Financial Memorandum, Statements on Legislative Competence and Delegated Powers Memorandum are provided [KT3/009-INQ000183263] [KT3/010-INQ000183268] [KT3/011-INQ000183269] [KT3/012-INQ000183266] [KT3/013-INQ000183267].

#### Coronavirus (Scotland) (No.2) Act 2020

14. This Act of the Scottish Parliament made further provision to respond to the emergency situation caused by the Covid-19 pandemic by adding to the modifications of the law made by the Coronavirus (Scotland) Act 2020. Again, the subject matter of this Act was wide-ranging. Amongst the provisions were adjustments to notice periods for student accommodation contracts and measures relating to bankruptcy to make bankruptcy easier to access, to make it harder for creditors to make individuals and sole traders bankrupt and to make bankruptcy processes easier to administer. Provision was also made for unpaid carers to receive a Coronavirus Carer's Allowance Supplement. The law was further modified in relation to the operation of the justice system. Other provisions included further provision in relation to reports, accounts and other documents.
15. The Bill was introduced on 12 May 2020. The Scottish Parliament agreed that the Coronavirus (Scotland) (No.2) Bill should be treated as an Emergency Bill. As set out above, Stages 1 to 3 of an Emergency Bill are taken on the same day unless the Scottish Parliament agrees to an alternative timescale. The timescale agreed for this Bill was to take Stage 1 on 13 May, Stage 2 on 19 May and Stage 3 on 20 May. Stage 2 of an Emergency Bill is normally taken by a Committee of the Whole Parliament, but the Scottish Parliament agreed that Stage 2 of this Bill would be taken by the then newly established Covid-19 Committee. The Bill, as passed by the Parliament on 20 May 2020, became an Act on 26 May 2020. Details of the Bill, including the Policy Memorandum, Explanatory Notes, Financial Memorandum, Statements on Legislative Competence and Delegated Powers Memorandum are provided [KT3/014- INQ000215058] [KT3/015-INQ000215059] [KT3/016- INQ000215060] [KT3/017- INQ000215061] [KT3/018-INQ000215062] [KT3/019- INQ000215063].
16. 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. Arrangements for reporting to the Scottish Parliament about the operation of provisions within legislation are outlined in the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023, and discussed in further detail below.

17. Other Covid-19 related provisions were made in the following Acts of the Scottish Parliament.

Scottish General Election (Coronavirus) Act 2021

18. This Bill was passed by the Scottish Parliament on 23 December 2020. It made arrangements for the Scottish Parliament general election on 6 May 2021 that were considered necessary to mitigate the public health effects of the Covid-19 pandemic. For example, the Bill included provisions to bring forward the deadline for postal vote applications, to give power to the Scottish Ministers to provide for an all-postal election to be held and to make the pre-election period for dissolution of the Scottish Parliament last only one day in case the Parliament needed to meet to pass emergency legislation to delay the election. The Act did not apply to any other national or local election. The Bill followed an expedited timetable, with the Parliament agreeing on 25 November 2020 to requirements in Standing Orders being suspended in relation to the minimum periods between Bill stages (Stage 1 concluded on 10 December 2020, Stage 2 on 17 December 2020 and Stage 3 on 23 December 2020).

19. Details of the Bill, including the Policy Memorandum, Explanatory Notes, Financial Memorandum, Statements on Legislative Competence and Delegated Powers Memorandum are provided [KT3/020- INQ000215064] [KT3/021- INQ000215065] [KT3/022- INQ000215066] [KT3/023- INQ000215067] [KT3/024- INQ000215068] [KT3/025- INQ000215069].

Coronavirus (Extension and Expiry) (Scotland) Act 2021

20. This Bill was passed by the Scottish Parliament on 24 June 2021. It provided for the expiry of provisions from the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No. 2) Act 2020 that were no longer required and initially extended those still required until the end of March 2022. The Bill was introduced on 18 June 2021 and at the meeting of the Parliament on 22 June 2021 the Parliament agreed that the Bill should be treated as an Emergency Bill. Stage 1 concluded on 22 June, Stage 2 on 23 June and Stage 3 on 24 June 2021.

21. Details of the Bill, including the Policy Memorandum, Explanatory Notes, Financial Memorandum, Statements on Legislative Competence and Delegated Powers Memorandum are provided [KT3/026- INQ000215070] [KT3/027- INQ000215071] [KT3/028- INQ000215072] [KT3/029- INQ000215073] [KT3/030- INQ000215074] [KT3/031- INQ000215075].

### Carer's Allowance Supplement (Scotland) Act 2021

22. This Bill was passed by the Scottish Parliament on 7 October 2021. The Bill provided that carers in Scotland who were in receipt of Carer's Allowance Supplement would receive a further Coronavirus Carer's Allowance Supplement, by way of an increased payment of the Carer's Allowance Supplement, in December 2021. Carer's Allowance Supplement is a payment made twice annually to persons who, on the qualifying date for each supplement, were in receipt of Carer's Allowance and resident in Scotland or otherwise met statutory eligibility conditions. The Act also contains an enabling provision that allowed for a more flexible approach to future payments should that have been required. The Bill was introduced on 22 June 2021 and followed an expedited timetable, with requirements in the Scottish Parliament's Standing Orders suspended in relation to minimum periods between Bill stages. Stage 1 concluded on 23 September, Stage 2 on 30 September and Stage 3 on 7 October 2021.

23. Details of the Bill, including the Policy Memorandum, Explanatory Notes, Financial Memorandum, Statements on Legislative Competence and Delegated Powers Memorandum are provided [KT3/032- INQ000215076] [KT3/033- INQ000215077] [KT3/034- INQ000215078] [KT3/035- INQ000215079] [KT3/036- INQ000215080] [KT3/037- INQ000215081].

### Coronavirus (Discretionary Compensation for Self-Isolation) Act 2022

24. This Bill was passed on 9 February 2022 to support health boards' responses to Covid-19 and management of their compensation duties during the pandemic. It extended a modification to the Public Health etc. (Scotland) Act which had been made by the UK Coronavirus Act 2020, the effect of which was that health boards had a power, rather than being under a duty, to provide compensation to anyone asked to self-isolate due to Covid-19. The Bill was introduced on 15 November 2021 and followed an expedited timetable, with requirements in the Scottish Parliament's Standing Orders suspended in relation to minimum periods between Bill stages. Stage 1 concluded on 20 January, Stage 2 on 27 January and Stage 3 on 9 February 2022.

25. Details of the Bill, including the Policy Memorandum, Explanatory Notes, Financial Memorandum, Statements on Legislative Competence and Delegated Powers Memorandum are provided [KT3/038- INQ000215082] [KT3/039- INQ000215083] [KT3/040- INQ000215084] [KT3/041- INQ000215085] [KT3/042- INQ000215086] [KT3/043- INQ000215087].

### Non-Domestic Rates (Coronavirus) (Scotland) Act 2022

26. This Bill was passed by the Scottish Parliament on 21 June 2022. The Act stated that any potential effect of Covid-19 cannot be considered when calculating a property's 'net annual value' and/or 'rateable value' on the basis that market-wide economic changes to rateable values, such as from Covid-19, should only be considered at revaluation in order to ensure fairness to all ratepayers, and that it is not appropriate to use the provisions on material change of circumstances in the non-domestic rates legislation in relation to Covid-19, or Covid-19 restrictions. Following introduction on 14 December 2021, all requirements in Standing Orders relating to minimum periods between stages were met, with Stage 1 concluding on 28 April, Stage 2 on 24 May and Stage 3 on 21 June 2022.

27. Details of the Bill, including the Policy Memorandum, Explanatory Notes, Statements on Legislative Competence and Financial Memorandum are provided [KT3/044- INQ000215088] [KT3/045- INQ000215089] [KT3/046- INQ000215090] [KT3/047- INQ000215091] [KT3/048- INQ000215092].

### Coronavirus (Recovery and Reform) (Scotland) Act 2022

28. This Bill was passed on 28 June 2022 to help Scotland recover from the pandemic and ensure greater resilience against future public health threats, drawing on learning from the response to Covid-19. For example, the Bill included powers for Scottish Ministers to make public health protection regulations to address a future public health threat. The Bill also included provision to ensure that in a future pandemic or public health emergency, Scottish Ministers have powers to take action in relation to educational establishments. As part of learning lessons from the Covid-19 pandemic, the Act updated the statute book to embed reforms in Scotland's public services and justice system that had been necessitated by the pandemic, but which it was clear would deliver improvements for service users and improved efficiency more generally. Furthermore, the Act provided for the extension of certain temporary Covid-19 related justice system provisions as a response to the impact of Covid-19 on the justice system. The Act supports the Scottish Government's updated Strategic Framework and Covid Recovery Strategy [previously provided to the Inquiry in Tranche 1: Strategic Documents on 8 December 2022: CIPI0319-01]. Following introduction on 25 January 2022, all requirements in Standing Orders relating to minimum periods between stages were met with Stage 1 concluding on 12 May, Stage 2 on 9 June and Stage 3 on 28 June 2022.



29. Details of the Bill, including the Policy Memorandum, Explanatory Notes, Financial Memorandum, Statements on Legislative Competence and Delegated Powers Memorandum are provided [KT3/049- INQ000215093] [KT3/050- INQ000215094] [KT3/051- INQ000215095] [KT3/052- INQ000215096] [KT3/053- INQ000215097] [KT3/054- INQ000215098].

#### Impact assessments for Scottish Bills

30. The Scottish Government published impact assessments for the Scottish Bills. These have been provided to the Inquiry as general disclosure documentation, except where exhibited.

#### **Secondary legislation**

##### Covid-19 Health Protection Regulations

31. Scottish Ministers used their powers in Schedule 19 of the Coronavirus Act 2020 to make health protection regulations throughout the pandemic.

32. There were four principal sets of regulations made under this power in the course of the pandemic, which were each subject to amending regulations: The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (SSI 2020/103); The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 (SSI 2020/279); the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (SSI 2020/344) and The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (SSI 2021/277). Each of the successive principal set of regulations revoked and replaced the previous principal regulations.

33. In addition to these principal regulations, restrictions and requirements applying only in Aberdeen City were made in The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 (SSI 2020/ 234) and temporary restrictions and requirements were made in the Health Protection (Coronavirus) (Restrictions and Requirements) (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/439).

34. These regulations included legal requirements and restrictions relating, at different times and among other things, to requirements to stay at home, gatherings, face coverings, domestic travel and travel within the Common Travel Area (the UK, Ireland, the Isle of Man and the Channel Islands), closure of and the operation of businesses and capacity at stadia and live events. A separate series of regulations covered international travel and is outlined below.

35. The Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023 discusses relevant aspects of these regulations, including the review process, the assessment of proportionality, the process for making Covid-19 Regulations for Non-Pharmaceutical Interventions (NPIs) and how the impacts of the regulations were considered using evidence and data analysis.
36. Overall, 75 SSIs making such regulations or amending them were made between March 2020 and April 2022. Details can be found on Legislation.gov.uk where the evolution of every provision through successive amendments is recorded. In this statement, these regulations are referred to collectively as the “Covid-19 Health Protection Regulations”.
37. The regulations included a provision requiring the Scottish Ministers to review the regulations at least every 21 days. As mentioned in the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023, these regulations were generally made using the “made affirmative” procedure. Paragraph 6 of Schedule 19 of the Coronavirus Act 2020 makes provision about parliamentary procedure for these regulations, which were made under the power in paragraph 1(1) of Schedule 19. It provided that where Ministers considered that the regulations needed to be made urgently, the regulations could follow the made affirmative procedure. Under this procedure, regulations can be made and come into force even though they have not been approved by the Parliament. The regulations ceased to have effect, however, unless the Parliament approved the SSI within 28 days of the regulations being made.
38. After initial restrictions were imposed in March 2020, the Scottish Government’s *Covid-19 Framework for Decision Making* was published on 23 April 2020, and is provided [KT3/055-INQ000131025]. This set out the Scottish Government’s approach to decision-making on Covid-19, including in relation to legislation, regulations and guidance. The framework sets out a ‘four harms’ approach to inform decision-making on non-pharmaceutical interventions, as explained in the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023. The proportionality of taking any particular action was assessed both in a general sense and in a legal sense. Following that consideration, the legality of the proposals would be considered in order to ensure that policy and associated measures were properly informed by legal considerations and measures were suitably drafted.
39. The Scottish Government’s evolving approach to NPIs, including the use of Regulations, over the course of the pandemic was further set out in a range of Covid-19 Strategic Framework publications, as described in the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023.

40. The Covid-19 Health Protection Regulations were accompanied by online public-facing guidance which provided advice on the legal requirements and restrictions and provided wider supplementary advice on behaviours to limit the spread of Coronavirus. The Module 2A DG Corporate statement submitted on 23 June 2023, outlines the public communications strategy and how public confidence in Scottish Government communications was gauged. Polling helped monitor if people were clear on what was required of them as a result of both non-legal guidance and legal restrictions. Scottish Government communications covered both together, so that what was sought and required of people was clearly set out in one place. The online guidance also covered international travel restrictions and advice described later in this statement. In late 2020, as the responsible administrations varied restrictions addressing the different circumstances in the four nations of the UK, the four governments co-operated to publish a web page with signposts to the guidance applicable in different areas.
41. The Covid-19 Health Protection Regulations, from 8 August 2020 onwards, included a duty for a person who was responsible for a place of worship, carrying on a business or providing a service to have regard to guidance issued by Scottish Ministers. See for example regulation 4(1) of the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021.
42. The public guidance was updated in response to feedback from stakeholders and the public about the application of the Covid-19 Health Protection Regulations to vulnerable groups. For example, it was amended in May 2020 to make clear to those experiencing domestic abuse that the regulations did not prevent such individuals leaving their homes. The Scottish Government also published a wide range of more specific guidance for categories of businesses and premises produced in consultation with relevant stakeholders. This included sector-specific guidance for, among other things, call-centre or close-contact environments, tourism and hospitality, cultural performances and events, close-contact services, vehicle lessons, transport, farmers and crofters, agriculture, amateur non-contact sport, public toilets, forestry, waste services, energy services, places of worship, moving house and universities and colleges.
43. The Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023 discusses the considerations in relation to deciding whether to give effect to measures by way of legal requirements/restrictions or setting measures out only in public health guidance. That Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023 also discusses the decision-making process that preceded the making of regulations, including the role of analysis and evidence.

44. There were exemptions to specific provisions in the Covid-19 Health Protection Regulations. For example, the requirement to wear a face covering indoors set out at paragraph 2 of schedule 7 to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020) did not apply to the persons listed there. The exemptions related to funerals, seeking medical assistance, providing care or assistance to a vulnerable person where the wearing of a face covering would materially impede the seeking of assistance, and the circumstance where the person was unable to wear a face covering due to physical or mental illness or disability. Another example concerns the restrictions on indoor public gatherings (as these applied in a Level 4 area – see paragraph 11(1)(b) of schedule 5 to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020). Those did not apply where the gathering was for certain purposes, including for the purpose of childcare, for the purpose of providing care or assistance to a vulnerable person, for the purpose of providing emergency or medical assistance, to avoid injury, illness or escaping a risk of harm, for facilitating shared parenting arrangements, and for gatherings relating to a funeral.

45. As explained in the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023, the regulations included restrictions on movement outside a person's home. From November 2020 the regulations included restrictions on travel within Scotland and between Scotland and other places in the Common Travel Area (the UK, Ireland, the Channel Islands and the Isle of Man) to limit the spread of the virus. It was a defence to a charge of breaching such restrictions that the person had a reasonable excuse to travel. The regulations included a non-exhaustive list of examples of reasonable excuses (see for example paragraph 16 of schedule 5 to the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020) included accessing, providing or receiving childcare, providing care or assistance to a vulnerable person, providing or receiving emergency assistance, providing or obtaining medical assistance, visiting a person receiving treatment in a hospital or who is residing in a hospice or care home, participating in shared parenting arrangements, and attending a gathering relating to a funeral or to travel for compassionate reasons which relate to the end of a person's life. Guidance was published to explain the restrictions and reasonable excuses, and made it clear, for example, that Covid-19 rules and guidance did not prevent anyone from leaving their home to escape domestic abuse or taking other measures to keep themselves safe from domestic abuse.

46. The impacts of measures on different sectors, communities and groups within the population were taken into account in decision making in relation to NPIs, as discussed in the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023. The

associated impact assessments are provided: [KT3/056-INQ000183075] [KT3/057-INQ000183076] [KT3/058-INQ000183077] [KT3/059-INQ000183078] [KT3/060-INQ000183079] [KT3/061-INQ000183080] [KT3/062-INQ000183081] [KT3/063-INQ000183082] [KT3/064-INQ000183083] [KT3/065-INQ000183084] [KT3/066-INQ000183085] [KT3/067-INQ000183086] [KT3/068-INQ000183087]

#### Enforcement of Covid-19 Health Protection Regulations

47. The first set of Covid-19 Health Protection regulations to come into force in Scotland were the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. These came into force on 26 March 2020. Part 4 of these regulations sets out matters relating to enforcement, including who had power to enforce the regulations, provision relating to offences, and the operation of the Fixed Penalty Notice (FPN) regime. These regulations in relation to enforcement differed from the equivalent English regulations in a number of ways, to ensure that they were operable in the context of Scots law and the Scottish criminal justice system. The main aspects of this enforcement regime (with some changes and developments as set out below) were retained in subsequent Covid-19 Health Protection Regulations which were made over the course of the pandemic.

48. As provided for in Regulation 7 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, constables had power to enforce the legal requirements and restrictions set out in the regulations. The Module 2A DG Justice corporate statement submitted on 23 June 2023 which accompanies this Module 2A DG Education and Justice (Legislation) statement explains the role that Police Scotland played in the enforcement of NPIs, in line with The Police and Fire Reform (Scotland) Act 2012. As mentioned below, the regulations were later amended so that persons designated by local authorities were also authorised to enforce certain restrictions on businesses. In practice, local authorities designated Environmental Health Officers and Trading Standards Officers to enforce these aspects of the regulations.

49. It was a defence to a charge of committing an offence under the regulations to show that the person, in the circumstances, had a reasonable excuse. Regulation 8 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 sets out a non-exhaustive list of reasonable excuses. The list specifically covered a number of circumstances, including relating to the circumstances of vulnerable persons. Examples of some of the reasonable excuses are provided below.

- To provide care or assistance to a vulnerable person, including to provide emergency assistance

- To attend a funeral of:
  - a member of the person's household
  - a close family member, or
  - if no-one within sub-paragraphs (i) or (ii) are attending, a friend
- In relation to children who do not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, "parent" includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child
- To avoid injury, illness or to escape a risk of harm.

50. The approach set out above was maintained through the three principal sets of regulations described above. The list of reasonable excuses was kept under review during the pandemic and amended as the legal requirements and restrictions were adjusted.

51. Regulation 9 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 made provision in respect of the operation of FPNs. The penalty payable in respect of a FPN was set at £60, reduced to £30 if paid within 28 days. This mirrored the fixed penalty levels set by the equivalent regulations in England and Wales. Consideration was given to whether fixed penalty levels in Scotland should follow other Scottish legislation – namely the Antisocial Behaviour etc. (Scotland) Act 2004 which sets the fine level under that legislation at £40. However, Ministers decided that FPNs should be set at the same level as in England and Wales. This was in keeping with the four nations approach taken when developing the initial regulations. If further FPNs were imposed on the same person, the penalty increased. After feedback from the Scottish Courts and Tribunals Service (SCTS), some technical modifications were made to these "laddering" provisions on 19 June 2020 to ensure they operated correctly. The form, effect and procedure that applied in relation to FPNs under the Covid-19 Health Protection Regulations were the same as those that apply to an FPN given under section 129(1) of the Antisocial Behaviour etc. (Scotland) Act 2004.

52. Subsequently FPN powers and Power of Entry were provided to Local Authority designated officers (LA officers) to support their enforcement of the requirements on businesses. These powers were based on those initially provided to Police Scotland. The Expert Officer Group, which included representatives of LA officers who were engaging with businesses on the ground, as well as the Health and Safety Executive and Police Scotland, provided feedback on operation of the regulations which supported development of the regulations and guidance for business.

53. Police Scotland, Crown Office and Procurator Fiscal Service (COPFS) and SCTS were consulted during the development of the initial Covid-19 Health Protection Regulations on the design and operability of the enforcement regime, and their feedback informed the development of the enforcement regime in the regulations. Engagement and consultation with Police Scotland, COPFS, SCTS, COSLA (the Convention of Scottish Local Authorities) and Local Authority Officers on the operation of the regulations continued throughout the period when legal requirements and restrictions were in force and this information was used to inform the development of the regulations. For example, a specific offence of attending a party in a private dwelling was added to the regulations to address the specific risks posed by large gatherings: regulation 6ZA of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (inserted into those Regulations in August 2020).
54. Explicit powers of entry were first included in the regulations on 28 August 2020 (regulation 6ZB, inserted into the regulations by the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 13) Regulations 2020). These were connected to the introduction of the prohibition on parties in private dwellings in regulation 6ZA. This power was continued in regulation 22 of the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020. A general power of entry was then included in regulation 6 of the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020. This general power had features intended to ensure its use was proportionate, including a requirement that the situation in which entry took place had to be urgent, in the absence of either the consent of the occupier or a warrant from a sheriff.

#### Local Authority Direction Regulations

55. In August 2020, Scottish Ministers made the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 which gave local authorities powers to make directions where necessary and proportionate in respect of premises, events, and public outdoor spaces. In summer 2020, businesses were reopening, and other activities were resuming. At that point, it was considered that outbreak management rather than national restrictions would be the principal tool for control and suppression of the virus, and it was important to enable action to be taken swiftly at a local level. From the experience of dealing with the first set of local outbreaks, the powers in these regulations were considered to provide appropriate tools to deal with local outbreaks.

56. These regulations provided that a FPN issued under Covid-19 Health Protection Regulations then in force would be taken into account in determining the penalty payable where a FPN was issued under these regulations. This was to ensure that those who repeatedly breached the regulations were deterred from continued non-compliance.
57. These regulations required to be reviewed every 42 days. The regulations contained an expiry provision. The expiry date required to be extended several times by SSI, as Ministers considered these regulations continued to be necessary through to September 2022.

#### International Travel Regulations

58. International travel regulations were made by Scottish Ministers principally using their powers in the Public Health etc (Scotland) Act 2008. The regulations implemented a number of emergency public health measures in relation to people arriving into Scotland from outside the Common Travel Area (i.e. the rest of the UK, the Republic of Ireland and the Crown Dependencies of Jersey, Guernsey and the Isle of Man) to reduce the public health risks posed by the spread of Covid-19. These were: (i) The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020; (ii) the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020; (iii) the Health Protection (coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 (as amended from time to time); as well as the subsequent consolidation: the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021.
59. Due to the nature of the public health emergency and the need to make changes quickly, the regulations were made under the 'made affirmative' procedure. Typically, regulations were preceded by a ministerial and official Covid(O) meeting with the UK Government, as explained in Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023. The regulations were subject to a 28-day statutory review requiring Ministers to review the need for the requirements imposed by the regulations, which involved an assessment as to whether the requirements remained necessary and proportionate. Prior to any such Ministerial decision, input to the advice to Ministers was sought from clinical, policy and legal interests in the Scottish Government. In practice the regulations were amended regularly as required by the prevailing public health circumstances. Overall, 77 SSIs making such regulations or amending them were made between June 2020 and March 2022. Details can be found at [legislation.gov.uk](https://legislation.gov.uk) where the evolution of the regulations through successive amendments is recorded.



60. The regulations introduced measures including a requirement on passengers to provide journey details, contact details and details of their intended onward travel to support contact tracing. This was provided in a Passenger Locator Form. Passengers were also required in certain circumstances to stay in specified premises for (initially) 14 days following arrival into Scotland. This was colloquially referred to as 'quarantine'. Pre-departure and post arrival testing were introduced in January 2021 and February 2021 respectively. In February 2021, managed isolation requirements were also placed upon certain passengers who arrived from 'acute risk' countries within the preceding 10 days. This required them to book and pay for a managed isolation package which required them to stay in a 'quarantine hotel' for 10 days and to take tests on day 2 and day 8 of the self-isolation period. In May 2021, the so-called red, amber, and green system for rating countries was introduced. The process behind the associated legislative changes involved rating them according to risk with different requirements placed on travellers from those countries depending on the status of the country they were coming from. Additionally, throughout the duration of the regulations, duties were placed on operators to provide information to passengers and to check compliance by passengers with requirements. Public guidance was published and regularly updated to explain what individuals were required to do when travelling to Scotland. The self-isolation and other requirements within these regulations were statutory requirements and the regulations provided for offences and penalties for contravening specified provisions. The level of FPNs and fines differed as between nations. In Scotland the level of an FPN was a maximum of £480.
61. The Module 2A Justice corporate statement submitted on 23 June 2023, which accompanies this statement, explains how Police Scotland enforced the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2022. Exemptions were built into the International Travel Regulations. For example, from the commencement of the international travel measures, there were exemptions for certain sectors, e.g. those essential to the critical infrastructure of the country, from having to comply with certain requirements in the regulations. These were set out in a schedule of the regulations and were reviewed and amended regularly. The sectoral exemptions, in effect, meant that individuals who were travelling to Scotland to undertake certain types of work or activity were exempt from certain requirements under the regulations.
62. The regulations provided for a defence to a charge of committing an offence to show that the person, in the circumstances, had a reasonable excuse. Reasonable excuses included leaving self-isolation to attend a funeral, to fulfil a legal obligation, to access medical assistance, to access critical public services or to obtain basic necessities.

63. In the later stages of the pandemic, different travel rules applied where a person was an eligible, vaccinated arrival. Travellers who fell within that definition were subject to less stringent legal requirements upon arrival into Scotland. This generally applied to those who had received an authorised Covid-19 vaccine or had participated in a relevant clinical trial. The definition of an authorised Covid-19 vaccine expanded over time.
64. There were regular discussions between the four nations on the International Travel Regulations including about differences between the regulations and enforcement. In particular, there was liaison with policy leads, legal teams and operational teams. Each government provided communications to the public on the regulations which outlined the requirements placed on a person within that nation. The impact assessments for International Travel Regulations are provided: [KT3/069-INQ000183065] [KT3/070-INQ000183066] [KT3/071-INQ000183067] [KT3/072-INQ000183068] [KT3/073-INQ000183069] [KT3/074-INQ000183070] [KT3/075-INQ000183071] [KT3/076-INQ000183072] [KT3/077-INQ000183073] [KT3/078-INQ000183074].

#### Other regulations

65. In addition to the Covid-19 Health Protection Regulations and International Travel Regulations, throughout the emergency period the Scottish Ministers exercised powers to make other regulations in response to the Covid-19 outbreak. The Scottish Government Legal Directorate prepared a chronological list of Covid-19 legislation that has been provided to the Inquiry [KT3/004-INQ000131091] and is referred to in paragraph 3 above. In addition, as outlined in the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023, the Scottish Government's two-monthly reports on Covid-19 Legislation contained details of SSIs made by Scottish Ministers where the primary purpose related to Covid-19.

#### Education Continuity Directions

66. Scottish Ministers used their powers under section 38(2) and part 2 of schedule 17 of the Coronavirus Act 2020 to give ten educational continuity directions (ECDs) to education authorities in respect of the schools and early learning and childcare (ELC) settings under their management. ECDs were not subject to parliamentary procedure. ECDs were Ministerial directions applicable to relevant operators of educational establishments to require the provision, or continuing provision, of education and childcare. Copies of the ECDs have already been provided to the Inquiry as part of the Tranche 4 groups of submissions and advice.

67. ECDs and accompanying guidance were in force in two phases – the first from May 2020 to August 2020 and the second from late December 2020 to early April 2021. Directions were given when the Scottish Ministers were satisfied – having had regard to the advice of the Chief Medical Officer – that it was necessary and proportionate to specify requirements of relevant operators of educational establishments in order to prevent the spread of Covid-19, protect public health and ensure the continuity of educational provision.
68. ECDs were subject to review every 21 days. Where new measures were needed, or removal of measures was required, the practice was that a new ECD was issued. In their decision-making about the measures to be included in the ECDs, the Scottish Ministers took the advice of the Covid-19 Educational Recovery Group (CERG) – a reference group which included representation from education authorities, teaching unions and other educational stakeholders, and took expert scientific advice from the Covid-19 Advisory Sub-Group on Education and Children’s Issues.
69. The ECDs sat alongside non-statutory guidance for schools and, separately, ELC settings, issued from time to time during the pandemic. Given the level of engagement with stakeholders in development of ECDs it was not necessary to utilise any of the enforcement and compliance measures set out in paragraph 12 of part 2 of schedule 17 of the Coronavirus Act 2020.

#### Statutory declarations

70. Under the Coronavirus Act 2020, the exercise of powers in schedule 21 and 22 (powers relating to potentially infectious persons and powers relating to events, gatherings and premises in Scotland) was contingent upon declarations being made by the Scottish Ministers. Scottish Ministers made declarations under schedule 21 and 22, published by the Scottish Government on 25 March 2020. In these declarations Scottish Ministers declared that they were of the view that the incidence or transmission of Covid-19 constituted a serious and imminent threat to public health in Scotland and that the powers conferred by Schedule 21 and Schedule 22 of the Coronavirus Act 2020 would be an effective means of delaying or preventing significant further transmission of the virus in Scotland. A link to these declarations is provided [KT3/079-INQ000183264]. Supplementary declarations were subsequently published by the Scottish Government on 30 March 2020, and are provided [KT3/080-INQ000183265]. The status of the powers in schedules 21 and 22 was reviewed regularly and details were contained in the two-monthly reports on Covid-19 Legislation mentioned below. The declaration in respect of the schedule 22 powers was revoked on 10 December 2021 and the declaration in respect of the schedule 21 powers was revoked on 24 March 2022.

## Review of Covid-19 Legislation

71. Scottish Ministers regularly reviewed the operation of relevant provisions in Covid-19 legislation in order to consider whether the provisions remained necessary. As mentioned above, the Module 2A DG Strategy and External Affairs corporate statement submitted on 23 June 2023 discusses this review process and the resulting two-monthly reports. These reports were scrutinised by the Scottish Parliament's Covid-19 Committee and its successor, the Covid-19 Recovery Committee. In the case of the earlier reports, a ministerial statement to Parliament was made in respect of each report and there was an opportunity for questions to be asked. This process developed and for later reports there was generally no statement to the Parliament, although the reports continued to be scrutinised by the Covid-19 Recovery Committee.
72. The reporting process evolved over time. For example, the Coronavirus (Scotland) (No 2) Act 2020 added a requirement for Scottish Ministers to take account of information on domestic abuse and to report on this and from the second report onwards the reports included information about the nature and number of instances of domestic abuse occurring during the reporting period. This was to ensure that the specific impact that the Covid-19 pandemic was having on those experiencing domestic abuse was considered when reviewing the operation of the provisions in the Scottish and UK Acts.
73. The Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 introduced measures that were considered necessary in the early stages of the Covid-19 pandemic in Scotland in 2020. The Acts included mechanisms to respond to the circumstances resulting from the pandemic. Their provisions were time-limited with powers for Ministers to suspend, revive, and bring forward the expiry of provisions. They also included provisions enabling Ministers by regulations to extend the expiry dates of provisions having laid a Statement of Reasons before the Parliament. The maximum length of any extension was six months. Those powers of extension of expiry dates were used, and the Statements of Reasons set out why the Scottish Government believed that the relevant provisions should be extended beyond their automatic expiry date. Examples of these Statements of Reasons are provided [KT3/081-INQ000183062] [KT3/082-INQ000183063] [KT3/083-INQ000183064].
74. In the case of the temporary provisions in the Coronavirus Act 2020 applying to devolved matters, where Ministers decided that particular powers were no longer necessary or appropriate, Scottish Ministers had power (in section 90) to alter the expiry date for those provisions by SSI. For example, the powers in section 52 and schedule 22 expired on

12 December 2021 by virtue of the Coronavirus Act 2020 (Early Expiry of Provisions) (Scotland) Regulations 2021. In some cases, early expiry of temporary provisions was a result of part of a statutory instrument ("SI") made by the UK Government. For example, sections 25 to 27, which make provision for the food supply chain and are devolved, expired in 2021 as a result of provision in a SI which extended to Scotland, England, Wales and Northern Ireland (SI 2021/856). Ministers also had powers in section 88 of the Act to suspend and revive provisions in the Act.

75. The temporary devolved provisions in the Coronavirus Act 2020 would have automatically expired on 24 March 2022 by virtue of section 89(1). At that date, a number of the temporary devolved provisions remained in force and did expire by virtue of section 89(1). But because Ministers considered that it remained necessary and proportionate to have certain of these powers available after 24 March 2022, due to the ongoing nature of the pandemic, and the need to mitigate the impact of Covid-19, including the Omicron variant and any other new variant, Ministers exercised their powers in section 90 of the Act to extend the statutory expiry date in respect of certain of these remaining provisions. The Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 extended the expiry date in respect of certain provisions by six months, to 24 September 2022. By the time the relevant provisions expired in September 2022, the subject-matter of those provisions was included in permanent Scottish legislation through the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

76. The Covid-19 Health Protection Regulations were reviewed at least every 21 days, the International Travel Regulations were reviewed every 28 days and the Local Authority Direction Regulations were reviewed every 42 days as discussed above.

## 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