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UK COVID-19 INQUIRY
MODULE 2A

WITNESS STATEMENT OF THE DIRECTOR GENERAL EDUCATION AND JUSTICE

This statement is one of a suite provided for Module 2A of the UK Covid Inquiry and these should be considered collectively. In relation to the issues raised by the Rule 9 notice dated 30 January 2023 served on the Scottish Government, in connection with Module 2A, the Director-General Education and Justice will say as follows:

Introduction

1. This statement will firstly set out the structure and policy roles of the Justice Directorate and Safer Communities Directorate, including the key decision makers in place throughout the specified time period, 21 January 2020 and 30 April 2022. It will then outline the relevant governance groups that had oversight of the Directorates in their response to the Covid-19 pandemic. A broad overview of the Directorates' approach and priorities throughout the pandemic is then set out, along with an explanation of what information and evidence was available, and how it was used. The statement will then provide a high level explanation of how the enforcement of non-pharmaceutical interventions (NPIs) operated within Scotland. Finally, the statement will outline the key lessons learned work that has been undertaken over the specified time period in relation to the pandemic response of the Justice and Safer Communities Directorates.

Structure and role of Justice Directorate and Safer Communities Directorate

2. Keith Brown MSP was appointed Cabinet Secretary for Justice and Veterans on 26 May 2021 and was supported by the Minister for Community Safety, Elena Whitham MSP, who

was appointed on 3 November 2022. Both remained in post until 29 March 2023. From 26 June 2018 to 20 May 2021 the Cabinet Secretary for Justice was Humza Yousaf MSP and from 27 June 2018 to 19 May 2021 the Minister for Community Safety was Ash Regan MSP (previously known as Ash Denham). In reference to the portfolio area of airport policing, Michael Matheson MSP was appointed Cabinet Secretary for Net Zero, Energy and Transport on 20 May 2021 and held this post until 29 March 2023. Prior to this Michael Matheson MSP was the Cabinet Secretary for Transport, Infrastructure and Connectivity from 26 June 2018.

3. A complete list of Scottish Government Ministers, Senior Civil Servants, and Special Advisers (SpAds) who were in post during the specified time period is provided: [JG2/0001 – INQ000131090].

Justice Directorate

4. During the specified time period the Justice Directorate had responsibility for policy related to the operation of civil and criminal courts, prisons, community justice services, and Family Law (including Marriage Ceremonies and Parental Rights).
5. During this time Neil Rennick was Director of Justice from January 2020 to November 2020. Stephen Pathirana and Katharine Peskett job shared the Director role from November 2020 to February 2021. Neil Rennick returned as Director in March 2021 for the remainder of the period. An organogram for the present structure of the Directorate is provided: [JG2/0002 – INQ000182897]. The Deputy Directors are shown in the table below.

Justice Directorate – Deputy Directors		
Name	Position	Date
Donna MacKinnon	Deputy Director -Community Justice	January 2020 – March 2020
Quentin Fisher (TRS)	Deputy Director -Community Justice	April- June 2020
Cat Dalrymple	Deputy Director -Community Justice	June 2020 - Present
Willie Cowan	Deputy Director - Criminal Justice	January 2020 - July 2022
Anna Donald (TRS)	Deputy Director - Criminal Justice	March 2020 – September 2020
Gavin Henderson	Deputy Director – Civil Law and Legal System	January 2020 - September 2020
Denise Swanson (TRS)	Deputy Director – Civil Law and Legal System	September 2020 - Present

6. The Justice Directorate works closely with operational and statutory partners to fulfil policy ambitions and statutory obligations. During the period, this collaboration remained consistent, and entities continued to work within existing decision making, independence and accountability frameworks. These are summarised below:

- Crown Office and Procurator Fiscal Service (COPFS) – Scotland's independent prosecution service, headed by the Lord Advocate, Solicitor General and Crown Agent. COPFS is governed by an Executive Board
- Scottish Courts and Tribunals Service (SCTS) - an independent body providing administrative support to Scottish courts and tribunals and to the judiciary of courts, including the High Court of Justiciary, Court of Session, sheriff courts and justice of the peace courts, and to the Office of the Public Guardian and Accountant of Court. The SCTS Board is chaired by the Lord President, the most senior judge in Scotland

- Scottish Prison Service (SPS) - an Executive Agency of the Scottish Government responsible for those who are committed to its care by the Courts and accountable to Scottish Ministers and, through them, to the Scottish Parliament
- Community Justice Scotland – a non-departmental public body accountable to Scottish Ministers that provides advice to Ministers and local government leaders to strengthen how public services, third sector and other partners work together to prevent and reduce further offending
- Scottish Legal Aid Board (SLAB) - a non-departmental public body responsible to Scottish Ministers, ensuring the administration and development of legal aid in Scotland
- Scottish Parole Board - a Tribunal non-departmental public body, independent of the Scottish Government, it ensures that those prisoners who are no longer regarded as presenting a risk to public safety may serve the remainder of their sentence in the community on licence under the supervision of a supervising officer.

Safer Communities Directorate

7. The Safer Communities Directorate is currently led by Donald McGillivray and helps make our communities safer by ensuring high quality public services are available when they are needed.
8. At the beginning of 2020, the Directorate was led by Gillian Russell, with Joe Griffin taking over as Director in March 2020. He led the Directorate until March 2021 when Donald McGillivray took over. The Deputy Directors are shown in the table below.

Safer Community Directorate – Deputy Directors		
Name	Position	Date
Clare Hicks	Deputy Director - Police Division	January 2020 – May 2021
John Somers	Deputy Director - Police Division	August 2021 – April 2022
Jim Kerr	Deputy Director - Resilience Division	January 2020 – April 2021 In April 2021 the Resilience Division was placed under the Directorate for Performance, Delivery and Resilience.

Amy Wilson	Deputy Director - Justice Analytical Services	January 2020 – April 2022
Wendy Wilkinson	Deputy Director - Safer Communities Division	January 2020 – April 2022
Helen Nisbet	Deputy Director - Defence, Security and Cyber Resilience	January 2020 – April 2022
Matt Allan	Deputy Director Compliance Division	November 2020 – April 2022 The Compliance Division was formed in November 2020 to support the Covid Safety & Compliance Programme. It became part of the Covid Coordination Directorate in 2021 and its formal work was completed on 31 March 2022.

9. The Directorate has key sponsorship roles of policing and fire services. Specifically:

- it sets the strategic direction for policing in Scotland. Police Scotland is the independent single police force responsible for policing across the whole of Scotland. The Chief Constable of Police Scotland takes operational decisions independently of Ministers
- it sponsors the Scottish Police Authority (SPA), the public body established to support and hold Police Scotland to account. The SPA is subject to scrutiny by a number of bodies, including the Scottish Parliament, Audit Scotland and His Majesty's Inspectorate of Constabulary in Scotland (HMICS)
- it has key roles in supporting the work of the Police Investigations and Review Commissioner (PIRC) and HMICS
- it funds, monitors and sets the direction for the Scottish Fire and Rescue Service (SFRS) in their front line role.

10. In policy terms the Directorate:

- ensures the police have the powers and capabilities to undertake their work to keep Scotland safe and plays a key role in managing police programmes, maintaining confidence and trust in policing, oversees the accountability arrangements in place

- through SPA to support railway policing in Scotland and the development of the new UK emergency services mobile communication network
- oversees the delivery of counter terrorism strategy in Scotland and the response to any attacks, works to minimise Scotland's vulnerability to, and capacity to rapidly recover from, cyber incidents, co-ordinates Scottish Government support for armed forces and veterans communities, supports Ministers in relation to wider defence and organised crime policy issues and represents Scottish Ministers' interests in international judicial cooperation, including extradition
 - sets the direction for community safety policy nationally, working with partners and communities to create safer communities, targeting a reduction in intentional and unintentional harm through a focus on prevention and early intervention.

The Directorate for Children and Families (DCAF)

11. DCAF is also relevant to policy portfolios of the Justice and Safer Communities Directorates. DCAF had policy responsibility for ensuring the safe and effective operation of the Children's Hearings System; resilience and contingency plans for the five secure care providers in Scotland; and those within Young Offender Institutions. Further information on the structure and role of DCAF is provided within the Module 2 Director General (DG) Education and Justice (Education) statement provided on 23 June 2023.

The Resilience Division

12. The Resilience Division is currently located in the Directorate for Performance, Delivery and Resilience, within the DG Strategy and External Affairs, however at the outset of what became known as the Covid-19 pandemic, the Resilience Division formed part of Safer Communities Directorate. It was placed within DG Strategy and External Affairs in April 2021.
13. Resilience Division leads on emergency planning, response and recovery for the Scottish Government. Specialist teams within the division assist in the development of detailed risk assessments, which are used to provide a common information picture for responders and to inform policy across Scotland.
14. Resilience Division is not responsible for preparedness activity against identified risk. That responsibility falls on individual policy areas (for example, Health for a pandemic, Animal

Health for avian influenza, etc.). Additionally, individual policy areas are responsible for the impacts of any risk against their business areas/sectors.

Scottish Government Resilience Room (SGoRR)

15. Resilience Division is responsible for running SGoRR which supports the Scottish Government in delivering a coordinated and effective response to civil emergencies, working proactively to support or broker the development of joined up, cross-Government solutions.
16. SGoRR can activate at any time of the day, all year round. The decision to activate is made by senior Resilience Division officials or, at Ministerial level, by the First Minister, the Deputy First Minister, or by the Cabinet Secretary for Justice and Veterans.
17. The decision to activate SGoRR is based on the number of organisations and directorates involved, the impact on the ground and the potential for the situation to escalate. SGoRR activates to deal with a situation as necessary and will then stand down.
18. During an activation there will generally be two types of meetings. The first is a SGoR (Ministerial), also referred to as SGoR(M), which sets the strategic direction for Scotland's response. It acts on behalf of, and reports to, the Scottish Cabinet. In the response phase, membership is determined by the nature of the emergency.
19. The second is a SGoR(Officials), also referred to as SGoR(O) which is a group of senior Scottish Government officials drawn from all relevant Directorates and, on occasion, external sources. It will analyse information received by the Scottish Government and provide advice to the SGoR(M) options for handling the consequences of the emergency; oversee implementation of decisions taken by the SGoR(M); and ensure co-ordination of Scottish Government activity.
20. For Covid-19, SGoRR was activated on 29th January 2020 and stood down on 23rd February 2022.
21. It is important to note that SGoRR is not an entity or an actor. SGoRR is an arena through which relevant actors are brought together to address a given situation. As such, SGoRR does not take ownership of risks: even where SGoRR is activated, policy areas are expected to lead on their usual areas of work and deal with increased pressures under their own resilience arrangements and business continuity plans.

22. For example, during the pandemic, primary health advice and briefing to Ministers will come directly from the DG Health and Social Care Directorates. Consequentially, policy areas, not SGoRR, will be responsible for any additional governance structures established, such as the Four Harms Group which was established during the Covid-19 pandemic.
23. SGoRR, when activated, is staffed by the Response Team in the Scottish Government Resilience Division and supported as necessary by volunteers from across Scottish Government. Neither Response Team officials nor volunteers are subject matter experts but are in place to facilitate a Scottish Government response.
24. SGoRR does not provide staffing into specific policy areas or a secretariat function beyond the preparation of SGoRR meetings. SGoRR will, however, co-ordinate official and ministerial level meetings, develop briefings and bring together, as necessary, different parts of government and other public bodies when a swift, co-ordinated cross-sectoral response is required.
25. More information on the Resilience Division and its role in the pandemic response, including the role of SGoRR, is provided in the Module 1 DG Strategy and External Affairs statement provided to the Inquiry on 9 May 2023 and the Module 2A DG Strategy and External Affairs statement, provided on 23 June 2023.

Governance

The Justice Board

26. The Justice Board was established by the Scottish Government in August 2011 to bring together the Chief Executives and equivalent leaders of key organisations across the justice system. The Board meets monthly and the representative organisations are integral to the delivery of the '*Vision for Justice in Scotland*' published in February 2022, provided: [JG2/0003 – INQ000182898]. The Board continued to meet during the period. The collective leadership of the Justice Board and the individual leadership of the Chief Executives of its respective organisations, has been central to the system responding successfully to Covid-19. At the start of the pandemic, the Board quickly established a Covid-19 Sub-Group focused on the operational response and a Criminal Justice Board (CJB) to lead the Recover, Renew and Transform (RRT) Programme of work, both of which continue to meet to collaboratively drive this work forward.

27. Membership of the Justice Board is set out below:

Justice Board Members (Jan 2020-April 2022)	Organisation
Neil Rennick (and then Stephen Pathirana and Katherine Peskett)	Director of Justice (Co-chair)
Joe Griffin, and then Don McGillivray	Director of Safer Communities (Co-chair)
Will Kerr and then Malcolm Graham	Deputy Chief Constable, Police Scotland
Eric McQueen	Chief Executive, SCTS
David Harvie and then John Logue	Chief Executive, COPFS
Teresa Medhurst	Chief Executive, SPS
Martin Blunden and then Ross Haggart	Chief Fire Officer, SFRS
Colin Lancaster	Chief Executive, SLAB
Lynn Brown	Chief Executive, SPA
Karyn McCluskey	Chief Executive, Community Justice Scotland
Neil Hunter	Chief Executive, Scottish Children's Reporter Administration
Michael Chalmers	Director of Children and Families
Linda McKay	Non-Executive Director

The Justice Board Coronavirus (Covid-19) Sub-Group

28. The Justice Board Coronavirus (Covid-19) Sub-Group was established in March 2020 in response to the outbreak. The Sub-Group's purpose was to oversee and manage the collective justice system response to the virus and to inform the Scottish Government's Resilience response to the pandemic, in particular resilience Situation Reports. The Sub-Group was focused on more immediate and practical issues than the senior-level CJB. The Terms of Reference for the Sub-Group is provided: [JG2/0004 – IN00000000].

29. Each Justice Board organisation is represented by their key operational leads on the Sub-Group and membership was expanded to extend beyond Justice Board organisations to the following:

- Scottish Government – Justice and Safer Communities
- SCTS
- COPFS
- SPS
- Police Scotland
- SPA
- SFRS
- Scottish Children's Reporter Administration
- SLAB
- Risk Management Authority (RMA)
- Victim Support Scotland
- Convention of Scottish Local Authorities (COSLA)
- Police Investigations and Review Commissioner
- Association of Scottish Social Workers
- Social Work Scotland / Midlothian Council
- Social Work Scotland / Midlothian Council
- Community Justice Scotland.

The Criminal Justice Board

30. The CJB was established in April 2020 as a sub-board of the Justice Board to manage the Criminal Justice system's handling of the Covid-19 pandemic and to provide operational oversight of the subsequent RRT Programme. From the outset, the focus of Justice organisations was not just on the immediate response to the pandemic, but medium-term recovery and longer-term transformation. The Board met fortnightly and continues to do so. One of its key focuses at the start of the pandemic was establishing the collaborative RRT Programme. The RRT Programme comprised of 5 project workstreams, each led by the relevant operational lead:

- High Court Trials – led by SCTS
- Virtual Summary Trials – judicially led and sponsored by SCTS
- Summary Procedures – initially led by COPFS, later judicially led
- Virtual Custody Courts – led by Police Scotland
- Community Justice and Prisons – led by Community Justice Scotland and the SPS.

31. Each project had a corresponding governance structure and project board. Delivery Plans for each workstream were developed and shared with the RRT sub group, a group comprising the Senior Responsible Owners (SROs) for each workstream. There were a number of Equality Impact Assessments (EQIAs) produced for the RRT workstreams but these were owned by the various representative organisations e.g. Police Scotland, SCTS and not published.

32. Membership of the CJB is set out below:

Criminal Justice Board Members (Jan 2020- April 2022)	Organisation
Neil Rennick (and then Stephen Pathirana and Katherine Peskett)	Director of Justice
Will Kerr and then Kenny MacDonald	Deputy Chief Constable, Police Scotland
Eric McQueen	Chief Executive, SCTS
David Harvie and then John Logue	Chief Executive, COPFS
Teresa Medhurst	Chief Executive, SPS
Colin Lancaster	Chief Executive, SLAB
Karyn McCluskey	Chief Executive Community Justice Scotland

The RRT Programme Advisory Group

33. To support the governance, the RRT Programme Advisory Group was established to play a role in bringing a person-centred perspective to the CJB's work, aimed at ensuring that the views, requirements and rights of the people experiencing the system were built into the planning and implementation of the programme. The remit of the Group was to provide non-binding advice to the CJB on the RRT programme, and linked activity where relevant, as follows:

- providing information on and insight into the varied rights and needs of those impacted by the system – i.e. those experiencing the justice system as a suspect/accused/prisoner/victim/witness and their families and supporters
- where possible, ensuring the voices, views and lived experiences of those impacted to the system are heard and recognised, and advising as to how this is best achieved

- highlighting real and potential consequences of the RRT programme on those impacted by the system, including differential impacts and those specifically related to protected characteristics
- inform equality and human rights impact assessments across the programme and comment on further evaluation/monitoring requirements
- provide guidance on mitigations required and trauma-informed approaches that could be adopted.

34. Advice provided to the CJB by the Group in February 2021 is provided: [JG2/0005 – INQ000182899]

Recover, Renew, Transform Programme Advisory Group Membership	
Organisation	Name
Advisory Group Chair	David Strang (Independent)
Victim Support Scotland	Kate Wallace (Chief Executive)
Criminal Justice Voluntary Sector Forum	Tracey McFall (Chief Executive)
ASSIST	Ann Fehilly (Chief Executive)
Scottish Women's Aid	Marsha Scott (Chief Executive)
Families Outside (Scottish Council for Voluntary Organisations rep)	Nancy Loucks (Chief Executive)
Scottish Centre for Crime and Justice Research	Margaret Malloch, Senior Researcher (University of Edinburgh)
Judiciary	Kathrine Mackie (Ex- Sheriff)
Association for Real Change Scotland	Tony Bowman (Policy and Development Manager)
Fair Justice System for Scotland Group	Frank Crowe (Chair)
Children 1st	Mark Ballard (Director of Strategic Planning)
NHS Education Scotland	Dr Caroline Bruce (Clinical Psychologist and Head of NHS Trauma training Programme)
Law Society Scotland	Ken Dalling (Law Society President)

35. At the end of 2021, the RRT Programme transitioned to an interim delivery plan, still overseen by the RRT sub group (the SRO Group) under the oversight of the CJB, while

partners considered how to reshape delivery building on the progress made by RRT but in a way that aligned with the long term outcomes articulated in the *Vision for Justice 2022*, as provided in paragraph 26.

The Criminal Justice Board Operations and Analysis Group (OAG)

36. The OAG is a sub-group of the CJB and made up of analysts and operational partners in criminal justice organisations. It was set up at the start of the pandemic to bring together intelligence from across the criminal justice system with the aim of providing system wide perspectives on questions posed by the CJB and from OAG members. During the pandemic, the group focussed much of its attention on the size - and projected size – of the prison population; on understanding the future demands on criminal justice social work; on supporting modelling of the courts backlog; and understanding the work in hand across different parts of the system. More recent focus has continued to be on the future prison population and on recovery of the courts system and disposals from Scottish courts.

Scottish Government Justice & Safer Communities Hub (SCJD)

37. To support the working of Scottish Government officials a 'Hub' was established and resourced in March 2020 to provide a single point of contact for Safer Communities and Justice Directorates for Covid-19 commissions - from SGoRR, Organisational Readiness and others - and to coordinate and collate responses. Their remit also included secretariat for the Justice Board Covid-19 Sub-Group. The Hub Operation Plan is provided: [JG2/0006 – INQ000182900]. The Hub was then absorbed by the Communities and Public Services Hub in December 2020 and was stood down in April 2021. The secretariat function for the Sub-Group was maintained by a member of staff in Justice Directorate.

38. The Hub contributed to Scottish Government wide decision making and advice including:

- consideration of PPE guidance
- consideration of key workers and associated testing regimes
- consideration of the draft Strategic Framework
- consideration of Covid-19 guidance
- consideration of information provided via the SG Safe and Sustained Opening Group
- consideration of union engagement by justice partner organisations

- consideration of statistical information submitted by justice partners to inform and share the Situation Report (SitRep) return from SCJD Hub to SGoRR
- consideration of information presented by Organisation Readiness on Concept of Operations papers (CONOPS).

39. The Justice Directorate Business Support Unit provided the secretariat for both the Justice Board and Criminal Justice Board. The Safer Communities and Justice Directorate Covid-19 Coordination Hub provided the secretariat for the Justice Board's Covid-19 Sub Group.

Community Justice RRT Subgroup

40. The Community Justice RRT Subgroup was established in June 2020 in response to the outbreak. This group was jointly chaired by the Chief Executive of Community Justice Scotland (CJS) and the Chief Executive of the SPS (with the Chief Executive of CJS latterly taking a lead role as the focus was more on community-based interventions). The membership consisted of:

- Community Justice Scotland
- SPS
- Police Scotland
- COSLA
- Association of Local Authority Chief Housing Officers
- COPFS
- SCTS
- Risk Management Authority
- Parole Board for Scotland
- Social Work Scotland (Justice Social Work)
- Scottish Government (policy and analysts)
- Victim Support Scotland
- Criminal Justice Voluntary Sector Forum.

41. The objectives of the sub-group were developed in alignment with the priorities agreed by the Criminal Justice Board and sought to reduce the number of individuals within the Scottish prison system by appropriately utilising community justice and prevention options. The Group intended to achieve that via the following project aims:

- support the development of improved models of governance and collaboration that build on practice and approaches embedded as a result of the Covid-19 pandemic
- support to the development of appropriate information sharing protocols and mechanisms which drive improvement in Scotland
- work in partnership with the Criminal Justice Board to develop and encourage effective practice in community justice
- support measures which redirect people either from entering the justice system or from progressing deeper into the system, e.g. appropriate increased use of Diversion, Arrest Referral, etc. – which also includes examination of the processes for Bail/Remand
- work in tandem with the modelling and options for trials in Scotland to ensure that scaling up of the courts does not lead to disproportionate and unsustainable impact on community justice services or increase pressure quickly in the prisons
- support the establishment of local, multiagency groups which deliver and monitor alternatives to prosecutorial action, bail supervision and restorative approaches that prevent and reduce offending by meeting the needs of those experiencing the justice system, including mental health, housing and substance misuse
- the identification and sharing of practice and learning from the Emergency Early Release (EER) programme and work to improve person-centred outcomes for those affected, particularly in the immediate post-liberation phase
- the enhanced use of Electronic Monitoring (EM) and associated person-centred support mechanisms to help people successfully reintegrate on liberation from custody and also as part of effective community-based outcomes including Bail
- the development of national reintegration and rehabilitation housing and support options for individuals liberated from custody which better facilitate a stable transition back to their communities.

Overview of the approach and priorities throughout the pandemic

42. As was the case across all public services and society as a whole, the Covid-19 pandemic posed significant challenges to the operation of the justice system. In Scotland, the Scottish Government has a strong history of working collaboratively with justice agencies to face and resolve challenges.

43. In the immediate months of the pandemic, the focus across all areas of work was to respond to these challenges – be it ensuring public safety through the operation of custody courts, to supporting those in prisons and on community sentences. The operation of the courts and

tribunals are key to enabling justice processes to take place, so it was vital that new ways of working were quickly adopted to enable this.

44. Police Scotland initiated Operation Talla, the objectives of which were to preserve life, maintain law and order, and prevent crime; all while maintaining the core policing service during a period of uncertainty, and; assisting colleagues in the NHS as they fought the worst effects of the pandemic.
45. These responses required legislation, and justice provisions within the emergency Coronavirus Acts enabled the core workings of courts to resume and addressed key consequences of public health restrictions across the justice system. During March 2020, Scottish Government officials worked rapidly with officials across government and the justice organisations to draft proportionate provisions to enable the continued operation of the justice sector. As set out in the Policy Memorandum for the first Coronavirus (Scotland) Act 2020, the Act made “adjustments to criminal procedure, and to other aspects of the justice system, to ensure that essential justice business can continue to be disposed of throughout the coronavirus outbreak”. A list of provisions relevant to the Justice portfolio within the Coronavirus Acts is provided (JG2/0007 –INQ000182901).
46. This work included completing EQIAs, considering what safeguards could be put in place. The Justice Directorate contributed to EQIA for the Coronavirus (Scotland) Bill, provided: [JG2/0008 – INQ000182765], and all EQIA's associated with the Coronavirus Acts' extension regulations and any extensions or permanence Acts in relation to these.
47. The Safer Communities Directorate did not complete any EQIA's as it did not lead on the drafting of any legislation.
48. Further information on how the Scottish Government considered and enacted legislation in response to the Covid-19 pandemic, along with exhibited impact assessments for the Scottish Bills, is provided in the two Module 2A DG Strategy and External Affairs statements, provided on 23 June 2023, and the Module 2A DG Communities statement, provided on 23 June 2023.
49. A key element of the legislation was the additional powers that were given to police officers which 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. Throughout the period, direct engagement with Police Scotland, other enforcement agencies and with wider justice partners was vital as legislation and restrictions evolved, and to ensure that the powers the

police were given were justified and proportionate. This included development of the approach and Scottish Government for those people organising, taking part in, and facilitating marches and parades during the pandemic.

50. *The Coronavirus (COVID-19): Scotland's Strategic Framework*, provided: [JG2/0009 – INQ000131025], was published on 23 October 2020 and set out the important role compliance and adherence to the measures could play in suppressing the virus, ensuring that, in addition to the role that enforcement agencies played, we also focussed on ensuring we supported individuals, businesses and organisations to adhere to protective measures for Covid-19.

51. As the pandemic continued, attention turned towards balancing the risks to public health with the operation of justice. Operational delivery partners, like the SCTS, took decisions based on an assessment of these risks and the available mitigations (such as the availability of Personal Protective Equipment (PPE), testing regimes and advice on distancing and room capacity) to inform the court programme and operations. These decisions and reviews were linked to advice from the Scottish Government more generally and the state of the pandemic as the country entered the levels system and localised outbreaks and hot spots were managed with local restrictions.

52. Throughout 2020-21 and 2021-22, a key focus was on maintaining the health of prisoners held in prisons and young offenders institutions and of prison staff. The closed environments of prisons were recognised as representing a particular risk of spread of the virus and there was engagement between the SPS, Scottish Government and local and national public health officials on necessary measures, whilst respecting the human rights of prisoners. Enabling prisoners to maintain contact with families was also a priority. There was subsequent engagement on the issues of testing and, in due course, the vaccination of prisoners and prison staff. The potential impact of the pandemic for community justice services in the community, including the management of high risk offenders, was also considered and addressed from the outset of the pandemic.

53. As key frontline services, there was also a significant focus on ensuring that Police Scotland and SFRS personnel were protected from Covid-19 throughout the pandemic whilst providing service delivery to communities across Scotland. This extended to monitoring absence levels, the availability of PPE, access to testing and vaccinations and physical distancing in the workplace, due to their ability to affect business continuity and service delivery.

54. Many charities faced severe financial difficulties because of the impact the pandemic had on their ability to conduct fundraising activities. To help address this, £1 million of consequential from the 2021 UK Budget was made available to create a fund to provide direct financial relief to third sector organisations that provide support to the Armed Forces community in Scotland.
55. As the risk decreased and management of the pandemic became more contained the focus of the sector shifted to consider how best to adjust to the 'new normal', building on the innovations and resilience measures which were quickly adopted during a time of crisis. The sector in April 2022 faced considerable backlogs and resource challenges, and the implementation of efficient and person-centred and trauma-informed practices, were key considerations in deciding the route out of the pandemic and into recovery.

Information and evidence available to EJD regarding Covid-19 in Scotland

Justice Analytical Services (JAS)

56. During the Covid-19 pandemic, JAS collected data from partner organisations to support policy decisions, inform Ministers and to make data publicly available in the form of regular statistical reports. These data sources were as follows:
- data from Police Scotland (Operation Talla) was collected weekly on the number of Covid-19 related interventions (Police dispersals, Fixed Penalty Notices (FPNs) and arrests across local authorities). JAS used this to update relevant sections of the SGoRR situation reports
 - information on policing demands, such as call, incident and crime volumes and Covid-19 enforcement, was used to publish information in the Justice Analytical Services Coronavirus (Covid-19) Data report. These reports were published on a monthly basis on the Scottish Government website from June 2020 to March 2022
 - Domestic Abuse incidents were recorded using the police data and also sourced from the above Operation Talla reports. They were uploaded to the Cabinet Office Dashboard on a weekly basis
 - for police recorded crime data, Police Scotland analysts provided data on the number of crimes and offences recorded on a monthly basis. This data was both published as Official Statistics and as part of the monthly Justice Analytical Services Coronavirus (Covid-19) Data report, as well on the Covid-19 Public Facing Dashboard (also hosted on the Scottish Government website)

- the SPS provided data on prison population levels and composition was collected and shared daily, then weekly in a Cabinet Secretary for Justice briefing
- JAS provided analysis of the data to support policy-making and understanding of the changing prison population as public health measures came into effect. Prison population levels data was also included in the monthly Coronavirus (Covid-19) Data Report
- *The Scottish Victimisation Telephone Survey* on people's experiences and perceptions of crime during the Covid-19 pandemic between September and October 2020. This was published as a one-off report and is provided: [JG2/0010 – INQ000182902]
- staff absences due to Covid-19 (including those with symptoms and self-isolating) were provided by justice partners (Police Scotland, COPFS, SPS, SFRS, PIRC) and collected daily (then weekly). This also included some data on the same for prisoners. Collated data was shared with the SCJD Covid-19 Coordination Hub and uploaded to Analytical Data Management (ADM), partial spreadsheet (excluding prisoners, COPFS and PIRC data) was emailed to Operational Support Division (OSD) Civil Contingencies Coordination (Police Scotland).

57. In addition to what has been noted above, the monthly Coronavirus (Covid-19) Data Report published by JAS also included a summary of data collected from a number of partners:

- COPFS Marking Data (subjects marked/not marked for court) and the Fatal Accident Enquiries Data
- data received from the SCTS on the number of registrations, indictments or complaints and disposals
- SCTS data initiated and disposed civil cases at the sheriff courts.

58. Additionally, JAS reviewed publicly available sources from comparison countries to review international policing approaches and responses to policing during lockdown and during the easing of lockdown, provided: [JG2/0011 – INQ000182903] [JG2/0012 – INQ000182904]. The main points from the papers were that most countries analysed followed a similar approach in responding to the pandemic through a lockdown enforced by police officers, and that what was permissible under lockdown varied from country to country. In most countries, individuals breaking lockdown were encouraged to obey restrictions prior to any enforcement such as fines or arrests. The Penalties imposed also varied significantly across countries, whilst in some examples (Germany, France and the USA) there have been clashes between public and police because of the restrictions. Officials are not aware of any changes being

made to Scotland's approach as a direct result of this paper's production. Colleagues from JAS presented the papers at the Independent Advisory Group on Police Use of Temporary Powers Relating to the Coronavirus Crisis and a note of the meeting is provided [JG2/0013 – INQ000215052].

Communication approach

59. During this time communication was essential both to enable the flow of information and data to inform decision making, but also to ensure decisions when made were communicated to enable the operational changes required. Information was shared between partners via email and through papers and minutes of relevant group meetings and paragraphs 26-41 detail our key structures for communications with key justice bodies. In addition, a weekly call with victim support organisations was established in March 2020, in order to ensure timely communication and share intelligence. Officials also participated in regular meetings with the Ministry of Justice (MoJ), the Home Office and the devolved administrations to discuss approaches across the UK.

60. Internal communications to other parts of the Scottish Government were largely informed by the rhythm of central commissions and consideration and was supported by the Justice Directorate through the preparation and submission to SGoRR of the daily Safer Communities and Justice SitRep which included:

- an update on staffing levels
- key issues arising
- a forward look for the coming week.

61. Examples of these daily SitReps are provided: [JG2/0014 – INQ000182921], [JG2/0015 – INQ000182922].

62. The liaison role between officials and Police Scotland was vital with regular discussions taking place with Police Scotland's Operation Talla team, initially on a daily and then on a weekly basis. This forum enabled the Police Division to share Scottish Government policy considerations with Police Scotland, which would then be fed into the Covid Coordination Directorate and relevant policy teams to help inform policy development, to advise Ministers and inform communication approaches.

Communication with Police Scotland

63. A daily synopsis was provided by the Operation Talla team which provided detail on the levels of public engagement, compliance and enforcement in line with the 4Es (Engage, Explain and Encourage, only then Enforce) approach adopted by Police Scotland. This included data on the issuing of FPNs over the preceding 24 hours. Workforce absence figures, including Covid-19 related absences were also detailed. Examples of these SitReps are provided: [JG2/0016 – INQ000182905] [JG2/0017 – INQINQ000182906].
64. The Police Division did not have a leading role in communications plans, however, officials regularly engaged with Police Scotland to ensure messaging was consistent across both organisations. Additionally, through this regular engagement, officials were able to feedback to internal communications leads issues of low compliance to help inform and reinforce communications messaging.
65. In March 2020, the then Cabinet Secretary for Justice, Mr Yousaf, and the Chief Constable agreed that the frequency of their regular meetings should be extended to twice-weekly calls while the Covid emergency continued. Attendees were, in most cases the Cabinet Secretary, the Chief Constable, one of his Deputy Chief Constables and were supported by civil servants. Minutes of the regular calls were initially cleared by then Cabinet Secretary, Mr Yousaf, and the Chief Constable, until early summer 2020. Thereafter, given the frequency of the meetings (twice weekly in the early months of the pandemic), the record of the meetings was cleared by officials.
66. The meetings were not intended to have a policy input, as there were other mechanisms that Police Scotland fed into to make their contributions. Rather, they provided the Chief Constable with an opportunity to update the Cabinet Secretary on Covid matters that were topical at the time. The updates included, but were not restricted to:
- the impact on, and compliance by, the public of the new Coronavirus regulations, including feedback on the issuing of FPNs
 - providing assurances of the police approach based around the 4Es
 - progress on the supply of PPE to officers
 - assaults on officers.

67. Examples of these meeting notes are provided: [JG2/0018 – INQ000182907] [JG2/0019 – INQ000182908].

68. The twice-weekly frequency was in place until September 2020, following which meetings were held roughly once a week. Mr Brown, on his appointment as Cabinet Secretary for Justice and Veterans in May 2021, assessed that this frequency was no longer necessary and the scheduling became an approximately monthly basis.

69. In addition, key messages regarding changes and the operation of the justice system during the different phases of pandemic management were provided for the First Minister's Press conferences, which at key points were also attended and supported by the Chief Constable. Most notably, support and exemptions of certain restrictions for those seeking help from domestic abuse were communicated, but also messages around exceptions to certain restrictions – such as travel, in order to fulfil jury duties.

70. Prior to the pandemic, the Justice Directorate had run a business continuity test based on a pandemic flu scenario which helped to ensure that internal communications and contingency plans could be successfully activated in March 2020. Part of this included ensuring out of hours contacts for all key justice agencies.

Scottish Government records management and internal communications policy

71. The Scottish Government has well established records management practices demonstrating compliance with Public Records (Scotland) Act 2011 (the PRSA), recognised as some of the most robust legislation in Europe. The Scottish Government's approach to minuting and use of messaging applications is set out in detail in the Module 2A DG Corporate statement, provided on 23 June 2023.

Enforcement of NPIs

72. Policing had a crucial role to play to ensure the public cooperated with the statutory covid restrictions and regulations.. The Police and Fire Reform (Scotland) Act 2012 established a system of oversight and governance which ensures the operational independence of the Chief Constable and ensures that Scottish Ministers have no role in directing Police Scotland. From the outset, the Chief Constable outlined a clear and consistent policing style, posture and deployment methodology. Throughout the course of the pandemic, enforcement action was taken only where efforts to the 4Es had been exhausted. The Chief Constable made

clear Police Scotland was committed to using the unprecedented legislative powers in a manner compatible with its values and in line with the fundamental principle of policing by consent. The human rights principles of lawfulness, necessity and proportionality were also required to be upheld.

73. Police Division was embedded into the statutory covid restrictions and requirements amendment process and regularly fed into the development of coronavirus legislation effecting police powers and enforcement, including the assessment of risk and harm through the four harms approach. The four harms approach underpinned the Scottish Government's assessment of risk and harm, our development of options and restrictions and our ability to make decisions based on a broad appreciation of the consequences of our actions. Police Division's role was facilitating knowledge transfer between Police Scotland and the Scottish Government, ensuring that changes to police powers were justified and proportionate. This included informing the development of equalities (and other relevant) impact assessments. For example, on the Managed Quarantine Service (MQS), the Managed Isolation Border Measures Distribution Group provided the forum for Police Division to engage with, and feed in, Police Scotland views along the end-to-end process of amending regulations.
74. As the Chief Constable has operational independence, no enforcement specific guidance was produced by the Scottish Government. Stakeholders, including Police Scotland used the powers afforded to them under the relevant legislation, as well as the broader Scottish Government guidance produced by Health and Social Care where appropriate.
75. As previously described, regular meetings took place with Police Scotland's Operation Talla team which enabled officials to share Scottish Government policy considerations with Police Scotland, which would then be fed into the Covid Coordination Directorate and the relevant policy teams to help inform policy development and to advise Ministers.
76. This intelligence gathering also focused on patterns and trends of breaches for particular offences which helped to inform approaches to enforcement and compliance. The introduction of Police Powers were considered by Scottish Government on a four harms basis; direct health impacts caused by Covid-19, health impacts not directly related to Covid-19, societal impacts and economic impacts. More information on the four harms is provided in the Module 2A DG Strategy and External Affairs statement, provided on 23 June 2023.

77. As well as providing an avenue that allowed Police Scotland's views to be a factor in decision making around regulation change, the relationship was also beneficial to Police Scotland and other justice partners as it allowed them to develop the required charge codes and guidance and operating procedures for officers and staff to be able to apply the regulations on the ground.
78. As highlighted in paragraph 73, the Police Division regularly fed into the development of coronavirus legislation effecting police powers and enforcement, ensuring that changes to police powers were justified and proportionate. A key part of this work was ensuring that Police Scotland had the powers necessary to enforce the legislation in place at any given time. As health and justice are devolved, coronavirus regulations were often different in Scotland to the rest of the UK and, as a result, required different police powers. The transfer of powers to devolved institutions means that there will be legitimate differences of policy approach, legislation and funding decisions due to different governance and legal systems in place and, in this instance, differing coronavirus regulations and restrictions. A key example of this is the additional power of entry powers Police Scotland were given to enforce restrictions on social gatherings, which was adapted to reflect the changing numbers of people permitted at social gatherings. The UK Government often had different restrictions on social gatherings and so the powers required to enforce the legislation was different to Scotland.
79. Scottish Government public communications and the First Minister daily press conference looked to address issues around misinformation and to set out clearly and effectively to the public the difference between both non-legal measures on restrictions and legislative sanctions on behaviour. The Chief Constable of Police Scotland would speak at the daily press conference when required. He spoke at the daily press conferences a total of seven times on 8 May 2020, 22 May 2020, 5 June 2020, 28 August 2020, 25 September 2020, 21 December 2020 and 8 January 2021. All forum for communication maintained open dialogue to allow concerns to be heard and addressed where possible and to minimise public confusion which could inadvertently lead to non-compliance.
80. Discussions also took place between Police Division Officials and Police Scotland on the any barriers the force was facing to support compliance and to enforce when necessary. These discussions primarily centred around workforce infections and corresponding staffing levels, the differing levels systems in place throughout the country and the challenges that presented from a compliance and enforcement perspective, regarding the power of entry, household

gatherings and travel restrictions. Further detail on the approach adopted can be found from paragraph 92 to 118.

81. Ultimately, any decisions relating to changes to police powers were made at a Ministerial level. Humza Yousaf was the Cabinet Secretary for Justice from 27 June 2018 to 19 May 2021 and had final sign-off on decisions relating to police powers throughout this period. Keith Brown was the Cabinet Secretary for Justice and Veterans from 26 May 2021 to 29 March 2023 and had final sign-off on decisions relating to police powers throughout this period.
82. The Justice Directorate did not lead on the development and implementation of coronavirus legislation and/or guidance, including decisions around exemptions, this was predominantly health led. As highlighted at paragraph 73, Police Division was embedded into the statutory covid restrictions and requirements amendment process and regularly fed into the development of coronavirus legislation effecting police powers and enforcement. Police Division's role was largely focused on the assessment of risk and harm through the four harms approach. The four harms encapsulated the multi-faceted harms of the crisis namely the direct harm of the disease itself, the wider health harm and the broader societal and economic impacts of both the virus itself and our necessary responses to it. The Scottish Government's approach was to suppress the virus to a very low level (the first harm) while seeking to minimise these broader harms. The Police Division predominantly contributed to the assessment process around the first harm by ensuring the police had the necessary powers to enforce coronavirus regulations, which were developed and implemented with the aim of suppressing the virus.
83. As part of their regular engagement with Police Division, Police Scotland highlighted practical issues which they considered were having an effect on compliance. One of the key factors they identified was the pace and frequency of updates to regulations and guidance. While updates were made in line with ongoing assessments of risk and harm through the four harms approach, Police Scotland felt that the speed and frequency of changes could result in public confusion on the regulations and guidance that were in place at any given time. Additionally, due to the difference in regulations and guidance between Scotland and the rest of the UK (rUK), Police Scotland also reported issues where visitors from rUK were unaware of the different restrictions in Scotland and, as a result, weren't following the restrictions and guidance in place in Scotland.

84. These issues did not have a significant impact on enforcement and were for the most part resolved through the 4E's approach. The Police Division fed these issues/concerns into the Covid Coordination Directorate and the relevant policy teams to help inform policy development. The Police Division also fed this into Scottish Government communications, to increase output and ensure consistency across Scottish Government and Police Scotland communications.

Local authority's role in compliance with and enforcement of the Coronavirus Regulations in businesses.

85. Designated local authority officials, generally Environmental Health Officers (EHOs) and Trading Standards Officers (TSOs), had specific responsibilities under the regulations around business premises. They delivered these responsibilities in liaison with the Police, who had wider responsibilities, and other regulators (e.g. Food Standards Scotland, Health and Safety Executive).

86. Local authorities engaged with businesses remotely (responding to queries on regulations/ guidance), and on-site (proactive visits, responding to concerns, or outbreak management). On-site they look to review the adherence with the guidance and regulation. This includes reviewing the controls the business has put in place (e.g. systems, processes, ventilation).

87. There were a number of enforcement actions a local authority could take where businesses are not following regulations or guidance. They could issue a 'direction' on a business, which required the business to take some specific course of action. Beyond this, they were able to issue prohibition notices (limiting the operations) or requiring the business to close. These required evidence that enforcement action was necessary and proportionate. Where a business continued to fail to meet the regulations, or did not adhere to a direction/ prohibition notice/ requirement to close, they were committing an offence under the regulations. Businesses could be prosecuted, and ultimately face considerable fines

88. The regulations allowed for local authority officers to issue FPNs for offences in their area of responsibility, but the supporting processes to process these penalties was not in place. Local authorities therefore did not use these powers. The SCTS raised concerns that the systems used by the Police for issuing FPNs could not support 32 local authorities as well and using existing local authority systems may lead to gaps/ inconsistencies in application of the power (e.g. FPNs not escalating appropriately, as local authorities do not know if Police

have already issued an FPN to a business). Local authorities also noted that the FPN penalty may not be a sufficient disincentive for business.

Independent Advisory Group (IAG) on Police Use of Temporary Powers

89. On 9 April 2020, it was announced that an IAG would be set up to review Police Scotland's use of new temporary police powers to tackle coronavirus. Mr. John Scott QC was commissioned to Chair the IAG after consultation with both the then Cabinet Secretary for Justice, Mr. Humza Yousaf MSP and the then Interim Chair of the SPA, Mr. David Crichton. It was agreed that the IAG would report directly to the SPA, as the governance and oversight body for Police Scotland. The Terms of reference for the IAG are produced: [JG2/0020 – INQ000182917].

90. The Group sought to involve the voices of community and grassroots representatives, advocates and activists, including those which deal with issues of equality, race, domestic and sexual violence, young persons, refugee and asylum matters, the Roma community, autism, disability, older people and any other groups that were impacted the use of such powers. It met by suitable electronic means, as and when required during the course of the Pandemic. It consistently recognised the need for operational independence on the part of the Chief Constable and the independent role, and responsibilities, of the Lord Advocate and the Procurator Fiscal in relation to policing in Scotland and the investigation and prosecution of crime.

91. As part of their work, the group reviewed Police Scotland's impact assessment processes and regularly engaged with Police Scotland on this topic. The group were also briefed on the work of Police Scotland's Equality, Diversity, Inclusion and Human Right's Oversight Board. In their final report the IAG concluded that Police Scotland has used their powers proportionately and in line with human rights throughout the pandemic. More information on the IAG final report is detailed in paragraph 158.

Fixed penalty notices

92. Police Division led on the decision making process around criminal sanctions in relation to the enforcement of coronavirus regulations, which contained an FPN regime. This involved providing advice to Ministers on the use and level of FPNs. Fixed Penalties under these Regulations for a first offence started at £60 (discounted to £30, if paid early) and doubled with each FPN issued until they reach £960.

93. Fine levels available under fixed penalty notice powers created under the Scottish regulations differed from those in the rest of the rUK since the start of the public health crisis. The equivalent FPNs in England start at £100 (£50, if paid early) and double until they reach £3,200. In Wales, FPNs start at £60 (£30, if paid early) and double until they reach £1,920. Police Division also had the liaison role to keep Police Scotland informed of ongoing changes in the FPN regime across rUK.
94. Police Division provided support to central colleagues by liaising with Police Scotland and ensuring their views were fed back into the policy cycle at times when the FPN framework in Scotland was being reviewed.
95. Decisions on the level of FPN in Scotland in relation to coronavirus regulations were made at a Ministerial level, namely the Cabinet Secretary with portfolio responsibility for Justice (as set out in paragraph 81) and the First Minister.
96. As justice and health are both devolved, decisions on the level of FPN in relation to the enforcement of coronavirus regulations were a decision for the Scottish Government. The level of FPN in Scotland was lower than the rUK and this decision was informed by advice provided to Scottish Ministers in October 2020, and in February 2021. Police Division sought advice from Police Scotland and COPFS to understand the effect of any increase to the penalty level of FPNs and to provide advice to Ministers. Police Division also considered views coming from both the Compliance Advisory Group (CAG) and the IAG on Police Scotland's exercise of Covid-19 powers chaired by John Scott QC.
97. The main focus of this engagement and information gathering was to evaluate options for a potential increase to FPN levels. However, a clear finding from this work showed there was not strong evidence to support increasing the level of FPNs associated with the coronavirus regulations. It was judged that higher levels of fine would not correlate with compliance. The introduction of higher fine levels would bring with it a real risk of undermining the policing by consent and 4Es approach and messaging that had been a constant throughout the pandemic.
98. Police Scotland highlighted that only 6% of the total police activity involved the use of fixed penalty notices and in the majority of cases (94%), education and explanation by Police Scotland was sufficient to achieve compliance.

99. The length of time that FPNs were in force did not in itself justify increasing the level of penalty. In considering whether to increase the level of FPNs, the ability to pay, the evidence showing this would disproportionately affect deprived communities, and the added pressure this could place on the wider justice system in terms of collection and enforcement, supported and informed that the FPN level remained the same.

Guidance and restrictions on movement

100. The Module 2A DG Strategy and External Affairs statement, provided to the Inquiry on 23 June 2023, sets out the approach taken to controls and guidance about travel during the pandemic. The aim of such measures was to reduce the risk of importing the virus from areas with high levels of cases to those with lower ones.

101. During periods of full 'lockdown' (spring 2020 and late 2020 to early 2021) such measures applied, in law, to non-essential travel outside the home. At other times they applied to travel between different parts of Scotland, travel between Scotland and other parts of the Common Travel Area (the UK, Ireland, the Channel Islands and the Isle of Man – the CTA), and between Scotland and places overseas (see International Travel below).

102. Within Scotland, at times where restrictions were in place but not full 'lockdown', the measures 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 (see below). 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.

103. Movement was of course never banned completely, but rather was permitted with a reasonable excuse and the regulations set out a range of examples of such reasonable excuses, such as essential travel for work or essential shopping.

Enforcement

104. Under what were new emergency laws, Police Scotland was able to issue fines in the form of FPNs to anyone who breached the restrictions, albeit officers typically worked through the 4Es, rather than simply using this punitive measure.

Strategic Framework and levels system

105. From 2 November 2020, Scotland followed a five protection levels system, which set out measures that could be applied nationally or locally depending on prevalence of the virus across Scotland.

106. The aim of the five-level system was to help the public to understand and prepare for protections that might be introduced, as well as showing how and when they may be lifted. The levels system spanned a number of protections but for the purposes of policing the main focus was indoor and outdoor gatherings, domestic travel and to a lesser extent face coverings.

107. The levels system presented operational challenges for Police Scotland, in that there were differing levels of restrictions operational in different parts of the country at any one time. In terms of public freedoms, there were limitations in what they could do to enforce on a practical level, and as time wore on public attitudes to adherence to the restrictions evolved. Local authority boundaries could see neighbours being required to adhere to either relaxed or tightened restrictions dependant on the prevalence of the virus.

108. When the levels varied throughout the country, including restricted travel within Scotland and to and from other parts of the CTA, Police Scotland presented its approach for policing this situation, continuing to adopt the 4Es approach and policing by consent. Trusting the law to work through high levels of public compliance, rather than relying on police enforcement.

109. While visible patrols acted as a deterrent, the Chief Constable was clear that he did not consider it appropriate or proportionate for officers to establish check points or roadblocks to enforce travel restrictions.

Power of entry

110. Airborne transmission of Covid-19 was the basis for the prohibition of indoor gatherings. The impact on human rights, equalities and other legal duties were carefully assessed and the emergency measures were considered proportionate and necessary in the case of a significant outbreak of infectious disease.
111. In order to reduce the potential for future clusters and outbreaks, ensuring police had the powers to enter and disperse large house parties was used to suppress the virus. These powers were used proportionately and as a last resort.
112. When considering the introduction and extension to the power of entry, Police Division acted as the interface between Police Scotland, the Covid Coordination Directorate and the relevant policy teams.
113. Through regular engagement with officials in the Police Division, Police Scotland highlighted the trends of non-compliance and how those could be addressed by the introduction of further powers. They also highlighted when the introduction or strengthening of powers were likely to become unenforceable, would not have the intended impact or when for example due to public fatigue or differing levels of restrictions, were becoming more challenging to enforce.
114. In turn, this information would be fed into coordinated advice, and decisions by, Ministers. Considerations to introduce, retain or extend the power of entry had to be balanced with the interests of law enforcement and the right to respect for private life and home (protected by Article 8 of the European Convention on Human Rights). While policing these rules, Police Scotland was keen to ensure that while looking to limit the spread of the virus, enforcement should constitute a very small part of the actions they took, with most of officer effort focussed on others of the 4Es.

Outdoor gatherings

115. A prominent focus for Police Scotland involved enforcing limitations to numbers gathering in outdoor settings. Outdoor gatherings were permitted to varying degrees through the levels system. Outdoor gatherings in the gardens of private dwellings posed a threat in terms of larger numbers gathering than was permitted. Such occasions also presented the risk that people could then move into the residence itself as the event progressed and in the event of inclement weather. Officials worked with Police Scotland to understand the compliance of the

public to adhere to these limits. Where compliance was inconsistent or low, Police Division officials fed this into central decision making to help inform the consequent impact that had on wider public compliance in terms of adhering to the regulations and therefore the potential for further spread of the virus.

116. In relation to outdoor mass gatherings, these settings posed a risk as a so-called 'super spreader' event. Decisions regarding the restriction of mass gatherings were primarily determined based on the advice of health and the impact on the spread of Covid-19. However, staff absence and consequent business continuity considerations that Police Scotland could experience due to the impacts of Covid-19 needed to be taken into consideration to policing such events.
117. Unplanned, mass gatherings were also an issue which Police Scotland were required to contend with during the pandemic, examples of these being the Kenmure Street protests (protests in Glasgow relating to the detention of individuals for alleged immigration violations) and a mass gathering in Glasgow when Rangers football club won the Scottish Premier League. Despite the powers afforded by the statutory coronavirus restrictions and regulations and the prohibition of gatherings, police officers were faced with a very difficult set of circumstances. The priority for Police Scotland was public safety, including reducing the risk of disorder, road safety and effective crowd management among the complexities of a vociferous crowd. This included established crowd control measures to prevent serious disorder in multiple areas and to protect the public. Where it was appropriate to do so officers moved to enforcement for a variety of offences including breaches of coronavirus regulations.
118. In commenting on the policing of the events in Kenmure Street and Rangers FC title celebrations in May 2021, the IAG said that Police Scotland's approach to both events "was informed by, and consistent with, relevant human rights principles and considerations, in particular, lawfulness, necessity and proportionality".

Marches and parades

119. The Safer Communities Directorate led on the development of the Scottish Government guidance for people wishing to organise, take part in, and facilitate marches and parades. During the Covid-19 pandemic, from March to October 2020, no mass gatherings were permitted, consistent with the Scottish Government's strategic approach to keeping the public safe. Following the introduction of the five-levels approach, and assessment of harm and public health risk, guidance was published in November 2020, and updated for a final time, in

May 2021, based on this system. Both are produced: [JG2/0021 – INQ000079914][JG2/0022 – INQ000182909].

120. In terms of overall approach to dealing with marches, parades and gatherings / protests, the Covid 19 Marches, Parades and Static Demonstrations Stakeholder Engagement Group was established as an oversight group to bring together colleagues from local government, Police Scotland, independent experts and officials from areas across Scottish Government with an interest in marches, parades and protests. The group met every three weeks from 7 December 2020 to 9 August 2021 to inform the regular review of the restrictions in place at the time, consider whether the restrictions needed to be altered in response to the changing circumstances, and to inform the Covid-19 guidance produced by the Scottish Government to on the restrictions to marches, parades and static demonstrations.

International travel

121. Border health measures – measures to control the risk of importation of the virus from outwith the CTA – were a key element in the Scottish Government’s measures to control Covid-19 transmission and maintain a safe and healthy population to reduce the risk of importing new Covid-19 cases into Scotland. The approach taken to international travel is set out in the Module 2A DG Strategy and External Affairs statement, provided on 23 June 2023.
122. Police Scotland’s enforcement of the regulations on international travel included enforcement of clear breaches of travel rules within close proximity of international travel hubs, an increased physical presence at international travel hubs and enforcement across the MQS.
123. In line with the domestic approach, Police Scotland enforcement of police powers, within the international travel sphere was balanced by their 4E’s approach to policing ensuring that policing by consent was maintained and human right principles of lawfulness, necessity and proportionality were upheld.
124. Police Division officials supported colleagues elsewhere in Scottish Government when deciding FPN levels and in engagement with reserved bodies, such as the Civil Aviation Authority and Border Force and Police Scotland on the monitoring of carriers’ performance under The statutory coronavirus restrictions and regulations.

Enforcement of the MQS in Scotland

125. Following the announcement by the First Minister that Scotland would implement a MQS in Scotland, Police Division led the development of the Security and Enforcement Pathway for the MQS.
126. Acting as a liaison between the contract managers in the UK Government's Department for Health and Social Care, the hotels, transport and security suppliers and colleagues as well as officials in Transport Scotland, Police Division led on the liaison function necessary to implement ssecurity mobilisation. This included development of the Security Standard Operating Procedure (SOP) in collaboration with Department for Health and Social Care (DHSC) that met the enforcement requirements of the Scottish MQS.
127. The MQS stood ready to deliver any agreed changes regarding countries on the red list and capacity was routinely reported to Ministers.
128. There were two distinct routes for Police Scotland to deal with potential quarantine breaches:
- where Police Scotland receive a report from Public Health Scotland where they have been unable to made contact with an individual requiring to quarantine
 - where a member of the public reported a suspected breach of quarantine.
129. In addition, management information on reports to the Procurator Fiscal and number of FPNs were also briefed to Scottish Ministers. Scottish Government worked with Police Scotland to look at patterns and trends in the data on enforcement.
130. The handling of referrals and enforcement action were both operational matters for the Chief Constable and Police Scotland and Public Health Scotland worked jointly to continuously improve the referral process and kept Scottish Ministers informed as required.

Face coverings

131. Police Scotland employed the 4Es approach to policing in relation to face covering enforcement. Providing a visible presence and intervening where necessary helped to encourage compliance. Police Division's role involved liaising with Police Scotland to understand the situation on the ground. This intelligence was then fed into central Covid-19

teams to help develop the approach being taken by Scottish Government on the wearing of face coverings.

Charging for airport policing

132. In March 2020, the Cabinet Secretary for Transport, Infrastructure and Connectivity, Mr Matheson, met with the owners of Glasgow and Aberdeen airport to discuss the challenges facing the aviation industry due to the Covid-19 pandemic. One of their requests to Government was to waive the bill for airport policing for the remainder of 2020. Given the importance of air connectivity to Scotland's economy, the Cabinet Secretary asked officials to explore this request further.

133. On 13 April 2020 and 16 July 2020 officials provided Ministers with formal advice that outlined Police Scotland's plan to waive charges for policing airports in April, May and June 2020, and then from July 2020 to link charges for airport policing to the number of passengers using the airports, as a proportion of previous business as usual passengers. These plans were agreed by Ministers as part of the effort to support Scotland's airports at a time of very reduced passenger numbers due to the impact of Covid-19. Ministers subsequently agreed that this arrangement could continue into 2021-22.

2021 United Nations Climate Change Conference (COP 26)

134. COP26 took place in Glasgow in October and November 2021, presenting a significant logistical challenge for policing, which was exacerbated by the ongoing pandemic. The Scottish Government was committed to ensuring that peaceful protest was an important part of the conference and worked closely with Police Scotland to ensure that the human rights of those engaging in activism was a central consideration in the planning and organisation of the event. Throughout the event, Police Scotland was able to maintain its human rights-based approach to policing, including the 4Es.

135. While most legal covid restrictions had been lifted, some advice (i.e. wearing of masks indoors) remained in place. Covid-19 is likely to have had an impact on those travelling to Glasgow from overseas with a combination of travel restrictions and ongoing health concerns meaning that some activists will have remained at home. This is likely to have affected the level and scale of some protest activity as well as numbers attending the larger, organised events. Police Scotland arrested 98 people for offences directly related to COP26, mostly in a public order space.

Impact of Covid-19 on the SPA budget position

136. The Scottish Government was aware of the budget pressures that SPA / Police Scotland continued to manage and the good progress being towards delivering a sustainable policing budget in 2020-21 and 2021-22, alongside managing the unprecedented operational impacts linked to Covid-19. Therefore, the Scottish Government provided an additional £8.2m funding in 2020-21 and £15m funding in 2021-22 to support the in-year impact of Covid-19 on the policing budget.
137. This funding was provided through consequential funding generated by UK Government spending. These one-off Covid-19 consequentials mitigated for reductions in external income and the additional costs of working in a Covid-19 environment including PPE, hygiene and additional cleaning measures.

Supporting police and fire workforces

138. As key frontline services, there was also a significant focus on ensuring that Police Scotland and SFRS personnel were protected from Covid-19 throughout the pandemic with issues and concerns highlighted to Scottish Government through the services themselves, trade unions and staff associations on issues such as absence levels, the availability of PPE, access to testing and vaccinations and physical distancing in the workplace. In return, although operational responsibility rests with the services themselves, officials provided advice to Police Scotland and SFRS on Covid-19 related issues, ensuring clarity was provided on what was expected of them.
139. Wendy Wilkinson, the Deputy Director of Safer Communities, also chaired the 'Testing Pathway' working group on behalf of NHS and health policy officials. This work focused on setting up access to routine Covid-19 testing for police and fire control centre staff.

The Covid Safety and Compliance Programme (CSCP)

140. The publication of the Strategic Framework on 23 October 2020, as produced in paragraph 50, set out the important role compliance and adherence to the measures could play in suppressing the virus. In preparation of the Strategic Framework, the First Minister and Deputy First Minister asked the then Cabinet Secretary for Social Security and Older People to take on a lead Cabinet Secretary role in relation to a compliance work programme.

141. The CSCP was not established to, nor could it coordinate, work across the whole public sector and it did not extend to health or social care environments. As outlined above, the programme had an overarching role in supporting the delivery of the Strategic Framework, however delivery of interventions to support compliance was led by the relevant policy leads from across Scottish Government, with the programme team supporting, monitoring and testing progress towards delivery.
142. The Compliance Programme's division's mission was to support policy teams and other partnership bodies to identify and remove barriers to compliance and create clear, well communicated advice, guidance and regulations. By doing so, they supported the Strategic Framework intent to suppress the virus to a level consistent with reducing its harms.
143. The programme had an overarching role in supporting the delivery of the Strategic Framework and recognised that improving compliance would require a set of evidence-based interventions to improve compliance in a number of key sectors. Delivery of these interventions was led by the relevant policy leads from across Scottish Government, with the programme team supporting, monitoring and testing progress towards delivery.
144. The purpose of establishing a programme was to give visibility to the high priority work underway on compliance across sectors, and to make an evaluation of what impact it was having on the virus. It also enabled sharing of information, evidence and good practice across different areas, and the commissioning of additional interventions where evidence suggested they were needed.
145. Supporting the CSCP was a Compliance Advisory Group (CAG). The CAG was established in September 2020, and consisted of Police Scotland, local government, academic interest and community-based stakeholders working alongside Scottish Government policy leads. Policy decisions were not made during meetings of the CAG, but the information gathered was fed into other parts of Scottish Government to help support decision making.
146. Between March and July 2021, the CSCP held five group discussions and 15 individual discussions with Scottish local authority chief executives or senior officers. In total, 26 local authorities were engaged.
147. Experiences and challenges around compliance and adherence with Covid-19 protective measures were the core of each engagement, with a range of themes covered, including:

- leadership
- situations and challenges in specific settings
- joint working
- vaccinations and testing
- community resilience
- enduring transmissions
- resourcing.

148. This engagement led to three joint products – a paper to COSLA Leaders Group and two operational notes with COSLA and SOLACE – reaffirming the roles of local and national leadership in ongoing Covid-19 response in autumn and winter 2021. These are provided: [JG2/0023 – INQ000182912] [JG2/0024 – INQ000182911] [JG2/0025 – INQ000182910].

149. The second half of 2021 saw a number of major events, including Scotland hosting matches as part of the Euro 2020 football tournament, COP26 in Glasgow and the emergence of the Omicron variant. The programme played an ongoing role in advising teams of the risks posed by these events and implementing baseline measures as part of their delivery.

HM Chief Inspector of Prisons Scotland

150. HM Inspectorate of Prisons for Scotland (HMIPS) has a statutory role to undertake a programme of inspections of Prisons, Court Custody Units (CCUs) and Prisoner Transport. The Chief Inspector of Prisons is also responsible for overseeing the independent monitoring of prisons across Scotland which is carried out on a day-to-day basis by Independent Prison Monitoring (IPM) volunteers. HMIPS undertakes inspections in partnership with relevant education, health and, where available, human rights experts.

151. In March 2020, in light of the need to avoid the spread of Covid-19 in prisons, the Chief Inspector confirmed the suspension of all prison, court custody unit, and prisoner transport inspections, along with all services carried out by independent prison monitoring volunteers. However, HMIPS confirmed its committed, where possible, to undertake liaison visits to prison establishment where this could be progressed alongside precautions related to Covid-19. A published notice advising of these changes is provided: [JG2/0026 – INQ000182913].

152. Liaison visits were undertaken by HMIPS to prisons during 2020-21, and in July 2021, HMIPS confirmed a return to a programme of full prison inspections.

153. In her 2020-21 Annual Report, provided: [JG2/0027 – INQ000182914], whilst noting the impact of measures introduced in the context of the Covid-19 pandemic on prisoners' rights, the Chief Inspector commended the SPS, NHS and the Scottish Government for their initial swift action in responding to the pandemic.

Lessons learned

154. Between June 2020 and October 2022, the Scottish Government published reports to the Scottish Parliament every two months on provisions in the Scottish Coronavirus Acts and provisions in the UK Coronavirus Act 2020 for which the Scottish Parliament gave legislative consent, plus secondary legislation whose main purpose is coronavirus related. These reports set out the status and operation of each measure. Where relevant and available, this included data relating to the frequency of the measure's use. More information on this process, along with exhibited copies of the reports, is provided in the Module 2A DG Strategy and External Affairs statements, provided on 23 June 2023.

155. As part of learning lessons from the pandemic, some measures which originated in temporary Scottish and UK Coronavirus Acts were made permanent by the Coronavirus (Recovery and Reform) (Scotland) Act 2022. Other justice measures were continued in the 2022 Act on a temporary basis, to allow further consideration of whether it would be beneficial and proportionate to retain them for the longer term. An overview of these changes is detailed in the exhibit provided in paragraph 45.

156. In September 2020, the HMICS and & HM Inspectorate of Prosecution in Scotland published a joint inspection of the use and impact of key emergency criminal justice provisions introduced in response to the Covid-19 pandemic, provided: [JG2/0028 – INQ000182915]. The joint inspection's key findings concluded that there had been "effective collaboration" between Police Scotland, COPFS and other criminal justice partners and that emergency criminal justice provision had "generally been used to good effect to support the continued operation of criminal justice processes while also complying with public health guidelines and limiting the risk of transmission among criminal justice professionals, witnesses and accused persons".

157. In September 2022, Audit Scotland published the scope of an audit into the scale and impact of backlogs in Scotland's criminal courts caused by the Covid-19 pandemic and the plans and actions by Scottish Government and justice partners to manage and reduce the backlog,

provided [JG2/0029 – INQ000182916]. The full Audit Report was published on 25 May 2023, provided [JG2/0030 – INQ000215053]. The Justice Board and Criminal Justice Board has been kept updated on the progress of the Audit. As with previous Audit Scotland audits, any lessons learned and recommendations arising will be taken forward collaboratively through the existing governance structures.

Independent Advisory Group on Police Use of Temporary Powers Report

158. On 25th August 2021, Mr. John Scott QC presented the SPA with the substantive findings of the IAG on Police Use of Temporary Powers related to the Coronavirus Crisis, provided [JG2/0031 – INQ000182918]. He concluded by making a range of points, including;

- “Over the course of the time period covered by this report, there were many amendments to the Regulations and guidelines that were introduced with the intention of curbing the spread of the Coronavirus and saving lives across the UK. Each of these amendments had substantial implications for the public, in terms of placing difficult restrictions on people’s freedom of movement and association”
- “However, they also impacted significantly on policing and placed increasingly complex demands on police officers to enforce the law while at the same time maintaining a degree of discretion in handling situations that arose in the context of potential breaches of the Regulations”
- “From the start of the pandemic, the Chief Constable of Scotland emphasised his commitment to ‘policing by consent’ during the course of the pandemic and issued officers with guidance about following the Four Es approach (i.e. Engage, Explain, Encourage and, only when necessary, Enforce)”
- “The data show that the vast majority of all encounters recorded by officers did involve engagement, explanation and encouragement, and that less than one in twelve interventions involved the use of enforcement. Moreover, the vast majority of all enforcement involved use of a financial penalty which avoided a criminal conviction”
- “There is clear evidence, therefore, that the Four Es model was successfully applied in Scotland. Of course, the role of the police was contingent on the actions of the public in terms of complying with the Regulations and guidelines (which were often competing or conflicting, difficult to follow and rapidly changing)”
- “For the most part, evidence suggests that the vast majority of the public complied with the Regulations, although many struggled to follow them to the letter, and a small minority did not comply at all”

- “In general, it appears that compliance was highest during the first lockdown period, when the rules were clear and consistent across the whole population. However, over time, as the Regulations became more differentiated (e.g. across different localities), public messaging became less clear (even by government ministers), and examples of high profile breaches diminished public confidence in the effectiveness of the Regulations, the challenges for policing increased”
- “The link between the use of enforcement and the easing and tightening of restrictions is indicative of a measured approach to policing; however, the data do reflect shifts in the profile of those who were being impacted by the restrictions over time”
- “One of the key findings from previous reports about the use of FPNs in Scotland was the high proportion of recipients who were already known to the police at the time of enforcement”
- “During the first lockdown, it was the view of police officers in Scotland that a very small section of the population had created a disproportionate amount of work from a policing point of view. However, more recent interviews with officers highlighted a perception that compliance had waned across a wider swathe of the population, especially amongst young people. As a result, it was stated that there was often an acceleration in the speed at which officers went through the Four Es”
- “The data showed that, overall, six out of ten FPNs were issued to people who were already known on Police Scotland’s criminal history system; however, this varied across demographic groups (e.g. it was higher amongst older FPN recipients and lower amongst those born outside the UK)”
- “More importantly, it declined substantially over time. This suggests that as time went on, and enforcement was being applied more quickly, it was increasingly impacting on younger people and those who had no prior history of offending”
- “One particular consequence of change over time in the Regulations and public messaging was a distinct change in the locus of where policing encounters took place. During the first lockdown when people were told to ‘stay at home’, the vast majority of FPNs were issued as a result of breaches that occurred in outdoor locations and public places (such as parks, beaches and areas of natural beauty)”
- “However, during phases two and three, when the messaging was more complex and largest areas of concern were around social gatherings and household mixing, the vast majority of FPNs were issued at incidents occurring indoors or in private spaces (including people’s homes, rented properties and other private venues)”
- “This change in both the focus of the messaging and the increasingly localised restrictions which targeted densely populated local authorities helps to explain why more rural divisions

issued a larger proportion of all FPNs in phase one, while more urban divisions issued a larger proportion in phases two and three”

- “However, this shift in locus also impacted on the temporal pattern of enforcement, which moved away from daytime activity towards a pattern of policing that is more traditionally associated with the night time economy. Clearly this must have impacted on changing shift patterns and operational planning for senior officers in some divisional areas as the pandemic went on”
- “It is clear that police use of enforcement has involved different groups of people, from different demographic backgrounds and very different social circumstances, at different points in time”.

His Majesty's Fire Service Inspectorate (HMFSI)

159. HMFSI in Scotland exists to provide independent, risk based and proportionate professional inspection of the SFRS. The Inspectorate also provides independent, professional advice to Scottish Ministers, and the Chief Inspector has certain functions in relation to non-domestic fire safety.

160. On 8 April 2020, HMFSI published an independent report on SFRS's planning and preparedness for Covid-19 which focussed on three specific areas; Governance, Operational Service Delivery and Critical Support Functions, provided: [JG2/0032– INQ000182919]. HMFSI concluded that “there is good evidence to support the SFRS strategic planning assumption and the necessary mitigation that will enable the Service to continue to deliver its statutory duties”.

161. On the 23 March 2021, HMFSI published an independent report, provided: [JG2/0033 – INQ000182920]. This report provides an update on the position that was reported on 8 April 2020, specifically providing update reports on Planning and Preparation, Opportunities and Organisational Learning and Working with Others. This work included reviewing all of the information and evidence originally provided by the SFRS as well as any documentation changes, scrutiny of minutes, decision and actions logs that were available. This information was triangulated with phone calls and virtual meetings with staff at all levels of the SFRS management, Representative Bodies and Regional Resilience Partners. This updated report supported the continued good practice within the SFRS, ensuring statutory duties and strategic objectives are achieved.

162. HMFSI has also noted some of the benefits that have been borne and accelerated out of the pandemic such as new working practices that we now take for granted, working with Microsoft Teams, the ability to work in a hybrid way and a massively reduced carbon footprint.

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

**JOE GRIFFIN
DG EDUCATION AND JUSTICE**

Dated: 23 June 2023