

Witness Name: Michael William Russell  
Statement No.: 1  
Exhibits: MR  
Dated: 11 December 2023

## UK COVID-19 INQUIRY

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### WITNESS STATEMENT OF MICHAEL WILLIAM RUSSELL

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In relation to the issues raised by the Rule 9 request dated 16<sup>th</sup> June 2023 in connection with Module 2A, I, Michael William Russell will say as follows: -

#### A: Background Qualifications and Role during the Covid-19 Pandemic

1. I am Michael William Russell, born on [Personal Data], a retired Member of the Scottish Parliament, a retired Scottish Government Minister, and a writer and commentator living at [Personal Data]
2. I have prepared this statement myself, but have been assisted by reference to records and material provided to me by the Scottish Government and specifically by the Directorate for Covid Inquiries of the Scottish Government.
3. Unless otherwise stated, the facts stated in this witness statement are within my own knowledge and are true. Where they are not within my own knowledge, they are derived from sources to which I refer and are true to the best of my knowledge and belief.
4. I am a graduate of the University of Edinburgh and worked in the media in various roles until I became the first full time CEO of the Scottish National Party in 1994. I remain active as a writer and commentator and am also President of the Scottish National Party. From 2015 to 2023 I was part time Professor in Scottish Culture and Governance at the University of Glasgow (on leave of absence from September 2016 to July 2021) and I remain an Honorary Professor in the University's College of Arts.

5. I was a Member of the Scottish Parliament for the South of Scotland Region from 1999 to 2003 and from 2007 to 2011. I was subsequently the Member of the Scottish Parliament for the Argyll & Bute Constituency from 2011 to 2021. I retired from that role on 5<sup>th</sup> May 2021.
6. I was Minister for the Environment in the Scottish Government which took office in May 2007, and subsequently served as Minister for Culture External Affairs and the Constitution (2009) Cabinet Secretary for Education and Lifelong Learning (2009-2014), Minister for UK Negotiations on Scotland's Place in Europe (2016-2018), Cabinet Secretary for Government Business & Constitutional Relations (2018-2020) & Cabinet Secretary for Constitution, Europe and External Affairs (2020-2021). I retired from Government on 17<sup>th</sup> May 2021.
7. I was a member of the Scottish Cabinet as a Cabinet Secretary from 2009-2014, although I attended on occasion as a Minister between 2007 and 2009. I attended Cabinet once again from August 2016 until I retired in May 2021.
8. Between March 2020 and my retirement in May 2021 I took responsibility for certain aspects of COVID legislation and regulation, steering the Legislative Consent process in the Scottish parliament for the UK Coronavirus Bill that passed in March 2020, and then taking responsibility for the first and second Scottish Coronavirus Bills. The first of those was introduced on 31<sup>st</sup> March 2020 and went through all its stages as Emergency Legislation on 1<sup>st</sup> April 2020. The second was introduced on the 11<sup>th</sup> of May 2020 and completed its final stage on 20<sup>th</sup> May 2020.
9. Thereafter I reported to the Parliament on the use of the powers in those bills. As the Scottish legislation provided for two monthly reporting, as opposed to the six monthly reporting in the UK Act, I spoke and answered questions in the Scottish Parliament on those reports as they were published, most notably on 9<sup>th</sup> June 2020, 11<sup>th</sup> August 2020, 6<sup>th</sup> October 2020, 8<sup>th</sup> December 2020, 11<sup>th</sup> February 2021 [MR/001-INQ000346153] [MR/002-INQ000346154] [MR/003-INQ000346155] [MR/004-INQ000346156] and [MR/005-INQ000346157]. Those reports are provided by the Scottish Government to the Inquiry and the full verbatim account of the Parliamentary discussion of these and all other statements and committee appearances are recorded in the Scottish Parliament's Official Report.

10. I also signed, brought forward, and proposed in the relevant Committee and, where necessary, the full Chamber a range of secondary legislation and regulations arising from the bills. In that regard I appeared before a range of Parliamentary Committees. To that extent I was involved in informing the public about the legislation and regulations, speaking to the media about those matters but I did not take part, except on one early occasion (31<sup>st</sup> March 2020), in the daily media briefings.
11. As time went on the division of labour with regard to considering, signing and explaining to Parliamentary Committees became clearer. John Swinney handled all such issues pertaining to schools and education and had a wider remit as Deputy First Minister in bringing forward strategic plans for Cabinet discussion and then implementation. Humza Yousaf as Justice Secretary dealt with issues of the legal system and travel, negotiating with the UK Government and taking forward the regulations on those matters. Specific subject areas might sometimes be handled by other Ministers (for example housing by Communities Secretary Aileen Campbell and Housing Minister Kevin Stewart) but I would tend to deal with the detail of regulations in Committee unless there was a strong reason for someone else doing so.
12. The minutes of the Scottish Cabinet will indicate my presence at the meetings of the Cabinet during the period under review. Those meetings were key to my understanding of the pandemic in Scotland as well as my opportunity to contribute to decision making about that. I was not a member of any sub group of the Cabinet considering these matters nor of any other special COVID-19 grouping or committee.
13. I also attended a range of Scottish Parliament committees over the period. I was present at the special COVID-19 Committee on 23 occasions between its formation in April 2020 and the end of that Session of the Scottish Parliament in March 2021 in order to propose secondary legislation and to give information on what was being brought forward. The papers, minutes and official reports of those meetings are published and are available to the Inquiry.
14. I had no role in joint decision making with the UK Government on COVID-19 but was the Scottish member of the Joint Ministerial Committee on European Negotiations which was established by the four governments of the UK in October 2016 with the aim of securing agreement on aspects of Brexit. This committee ceased to meet once the UK had left the EU on 31<sup>st</sup> January 2021 but in the period between January 2020 and that date it met 8 times. The first two were meetings in person (London on

9<sup>th</sup> January 2020 and Cardiff on 28<sup>th</sup> January 2020) and the remaining six were held by video conference. At these meetings and in correspondence I made the case, alongside my Welsh colleague, for a pause in the Brexit transition talks and process to allow for all the resources of Government to be focused on the pandemic. To this end I also, with the agreement of Scotland's First Minister, suspended all work on the Scottish independence process including the testing of the proposed question, on 18<sup>th</sup> March 2020 and informed my UK counterpart, Michael Gove, of that decision in writing, urging him to reciprocate by suspending Brexit activity. That letter has been provided to the Inquiry [MR/006-INQ000346158].

15. I had no formal role in working with local government during the pandemic but I was aware of the particular needs of my own area, Argyll & Bute, including concerns on the islands with regard to the need to control access, and the possibility of loosening restrictions if there were no outbreaks on those islands. I also was active in making representations to, and working with, Argyll & Bute Council on Covid-19 issues and particular local economic needs.

**B: Initial understanding and response to COVID-19 (January 2020 – March 2020)**

16. Although reporting of the pandemic as it spread gained intensity during January and February the first full realisation of its potential to be a world changing event of a type that neither I or my contemporaries would have experienced before came, for me, from discussion in Cabinet.
17. On 1<sup>st</sup> March 2020 I announced to my local Constituency Party that I would not be standing again for Parliament and the work and publicity around that announcement occupied some of my attention at that time. I had also taken on additional Governmental responsibilities - particularly responsibility for all of External Affairs rather than just Brexit - in the Scottish Government reshuffle that took place on 17<sup>th</sup> February 2020 following the departure of Derek MacKay from Government and had gained an additional junior minister in my team, Jenny Gilruth.
18. I was not present at the Cabinet Meeting of 10<sup>th</sup> March (I was at an informal meeting of Brexit ministers from Wales and Northern Ireland being held in London) but one of my deputy ministers Graeme Dey (who was present in his role as Minister for Parliamentary Business) told me almost immediately afterwards that the information and discussion on that day had in his words, "put the fear of God into him".

19. I am a keen photographer and post a single photograph each day on a publicly available website called “Blipfoto” which acts as a sort of daily journal. I have done so for more than twelve years under the name “Feorlean” at the site Blipfoto.com. My first mention of the pandemic in that journal occurs on the 10<sup>th</sup> of March 2020 from London but mentions become frequent thereafter, and this mirrors the rapidly growing recognition of the unprecedented scale and impact of what was emerging. For example on the 11<sup>th</sup> of March I recorded the posters going up around the Parliament, on the 12<sup>th</sup> the initial restrictions on gatherings (though the Parliament continued to allow visitors), on the 16<sup>th</sup> the empty shelves in my local supermarket and on the 24<sup>th</sup> the immediate effects of lockdown (which had taken effect that day) on traffic in Edinburgh.
20. I was present at the next Cabinet Meeting on 17<sup>th</sup> March and the briefing at that meeting by the CMO and the Cabinet secretary for Health was comprehensive and very concerning. The indication that any lockdown, when (rather than if) it came would be lengthy and the almost throw away remark about schools which might have to be closed until the autumn had huge impact on myself and I think other Cabinet members. As a former Education Secretary married to a former Primary School Head Teacher the schools issues struck home particularly strongly.
21. At the meeting in London on 10<sup>th</sup> March I had been informed that the First Minister and Deputy First Minister for Northern Ireland, who were present and who were intending to go to the St Patrick’s Day events in Washington were likely now to cancel that trip in the light of the growing difficulties with COVID-19. This also weighed heavily on me and sometime later that week I decided not to proceed with my planned trip to the USA later in March in order to take part in events around Tartan Day, which is the 6<sup>th</sup> of April.
22. The reorientation of virtually all officials towards dealing with COVID-19 was also a clear sign of the unique nature of the challenge being faced. Between 14<sup>th</sup> and 17<sup>th</sup> of March I assumed responsibility for the Legislative Consent Motion for the UK Coronavirus Bill through the Scottish Parliament and shortly afterward started discussions about the need for a separate Scottish Bill that could deal with emergency measures needed in Scotland under the devolved powers and for areas which were the specific responsibility of the Scottish Government and Parliament.

23. Those of us who had never been Health Ministers had received no briefing on preparedness for a pandemic and of course none of us had been Ministers during the 2003 SARS outbreak.
24. For me, therefore, the key meetings were the Cabinet meetings in March as well as the meetings that were held which began the work on the Legislative Consent Process for the UK Coronavirus Bill. My first statement to Parliament about that Legislative Consent process was made on 19<sup>th</sup> March and I appeared before the Parliament's Finance and Constitution Committee on the morning of 24<sup>th</sup> March to give evidence on it, before the full Chamber approved the Legislative Consent Motion unanimously that same day.
25. Of course elected representatives could have been in no doubt about the immense concern that these matters were causing in the population at large. The volume of emails and calls that constituency offices were receiving about COVID-19 was enormous. My own team estimated that at times during this early stage of the pandemic we were taking more inquiries and dealing with more individual cases in a day than we usually did in a month. Given that my constituency consisted not just of part of rural mainland Scotland but also 23 inhabited islands there was particular pressure regarding any possible restrictions on travel as well as substantial worries about the food supply chain. Two of my three Parliamentary staff started working from home on or around 14<sup>th</sup> March and my office in Dunoon closed on Friday 21<sup>st</sup> March. Along with other MSPs there was some concern that clear prompt advice about offices and their closure was not forthcoming from the Parliamentary Authorities. I recall also being concerned that visitors were still being admitted to the Parliament itself though receptions and meetings for those not working on the Parliamentary estate had been suspended and the Parliament bar closed.
26. I have no doubt that by around the end of the first week in March the Scottish Government at every level recognised the seriousness of the threat and that work to meet it began earlier than that but accelerated very rapidly from then onwards. From my own observations it appeared to me that the First Minister, the Health Secretary and the CMO were particularly engaged and very worried, and that on occasion they felt that they were was a slower response from the UK Government than they would have wished. Indeed on one occasion, accompanying the First Minister into the Chamber for FMQs - I think it was on Thursday 12<sup>th</sup> March 2020 – she indicated to me that she felt that there should be a faster ban on large gatherings than had yet

been agreed with the UK, and that she was considering moving ahead on this and other matters without four nations agreement, though she realised the importance of the four nations trying to keep in step. Of course, sporting bodies themselves moved unilaterally the day after, forcing the UK Government to react. She knew my own experience of dealing with the UK Government which is why she may have mentioned it.

27. I had no involvement with or knowledge of discussions regarding the NIKE Conference in Edinburgh on 26/27 February 2020 nor with the Scotland vs France 4 Nations Rugby Match on 8<sup>th</sup> March 2020.

Initial strategy & decision making

28. I don't think I had a view on, or indeed any knowledge of, the full strategy before the Cabinet presentation and discussion on 17<sup>th</sup> March. The information from both the Health Secretary and the CMO at that meeting outlined what the strategy was and how it would be implemented and there was a detailed discussion of it on that day. I do not recollect any discussion of the issue of herd immunity except that the scientific advice seemed to be very sceptical of it. There were earlier indications of course of the overall approach being taken but I would not have regarded myself as well enough informed or experienced in health and pandemic policy to offer much of a view. Perhaps later in the pandemic it became clearer to me that we needed to have a continuing debate about the four harms (as outlined in the document COVID-19 Framework for Decision Making published by the Scottish Government in April 2020 [MR/007-INQ000131056] and the relative balance that was struck both in Scotland and in the UK as a whole but initially what was presented to Cabinet was, it appeared to me, unanswerable and urgently needed. Sometime later – as indicated for example in the First Minister's introduction to the Cabinet on 6<sup>th</sup> October – the need to interrogate the proposals from the medical and scientific advisers in the light of a broader "four harms" context and any possible resistance to continuing restrictions became more obvious and given experience gained by then it was more likely that Cabinet members could contribute with some effect. We had been learning as we went along, a point I also heard Jason Leitch make on more than one occasion with regard to the medical advice, including that coming from the WHO. That growing confidence in challenge and consideration of alternatives also applied to consideration of the right place for decisions to be made if there was a disagreement about them.

29. As I have indicated above I believe that the Lockdown on March 23<sup>rd</sup> was inevitable given the advice – in fact unavoidable. I certainly believed that from 17<sup>th</sup> March and that belief only grew as I took forward the unprecedented measures in the UK Bill. As many of these were predicated on the restriction of actions that would have been unthinkable outwith a national emergency then the need for a lockdown was also implicit in the regulations being imposed. With hindsight it would have been possible to move more quickly to a full lockdown but as we were learning as we went along I think the reluctance to take what were very extreme measures is understandable. At the time 12 weeks (a timescale that had been indicated to the Cabinet by the CMO) seemed an intimidatingly long period and there were some discussions about whether a shorter period was possible. Of course it turned out to be only the start. Similarly on the issue of discharge into care homes that was a move that was supported across the board and cross party in the chamber too. It was only with hindsight that the distressing and tragic problems inherent in it were recognised.
30. In short I was more than willing to follow the medical and scientific advice, as presented at the time and to be led in that by the First Minister and the Health Secretary who were much closer every day to the issues and arguments around the formation of that advice. My key priority at that time was to find ways to deliver the legislation and regulations needed to implement the strategy so devised and to re-focus my work on that task.
31. I was receiving my main briefings on the pandemic and the fast developing situation with regard to actions to be taken from weekly Cabinet meetings, from the wider briefing of MSPs and from the work I was doing on the Legislative Consent Motion. These were fully adequate for what I had to do in Government though as I have indicated I thought the information coming to MSPs about what should be done with offices needed more direction from the Presiding Officer. I was impressed by the work being done by the team working on the Legislative Consent Motion and then on the emergency bills which was drawing together various strands of government in a very effective and often unique way. Strategy and Planning led by the First Minister appeared energetic and comprehensive though I was worried about the pressure on colleagues both Ministerial and official given what the demands that I saw upon them.



32. The advice I was giving to my colleagues was solely on the matter of legislative process in order to allow us to secure approval of the Legislative Consent Motion as speedily as possible and then to produce an emergency Bill of our own that would meet the needs of individual Cabinet Secretaries and parts of Government. Much of the background work on this was being done by the team of officials led by David Rogers who had headed the Constitution Unit and many of them came from that unit with which I was very familiar. I met with them regularly and also talked with Ministerial colleagues as necessary.

### **C: Role in relation to non-pharmaceutical interventions (NPIs)**

33. Lockdown came about as a result of UK and Scottish scientific advice, as I understand it. As I indicate above the advice that the Scottish Cabinet had received was that it was virtually unavoidable by the middle of March. My understanding at the time is that the Scottish Government was pressing for it at least a few days before the decision was made on a Four Nations basis. Certainly had the Cabinet been asked to approve it say on the 19<sup>th</sup> of March, when the schools announcement was made, it would have, in my view, done so without question. With hindsight of course imposing it even earlier might have had beneficial effects but the earliest I think the Scottish Cabinet would have been aware of those matters would have been around the 10<sup>th</sup> of March.

34. The lockdown in January 2021 was also inevitable but might have taken place sooner. For example the Scottish Cabinet discussion on the 6<sup>th</sup> of October indicated that there was the need to make very difficult decisions but there was still a desire to try and avoid another lockdown, not least because there was some worry that it would not be as closely observed as the first one and would therefore be less effective.

35. The UK had a short further lockdown commencing on 5<sup>th</sup> November but the Scottish situation was, we were told in Cabinet, different and the advice was that we should continue to operate what were in any case very restrictive controls, the severity of which varied according to on the ground information in local authority areas. There was a recognition during November that these would need to be even further tightened with the aim of controlling the spread of the virus but still with the hope that a full lockdown could be avoided. The hope that there could be a respite of some sort over the Christmas period – something that appeared to be more an *idée fixe* for the

UK Government than for the Scottish Government – was largely abandoned after the emergency Cabinet on Saturday 18<sup>th</sup> December which confirmed that the threat of the new variant would require even stricter controls which were fully implemented after a further Cabinet meeting on 4<sup>th</sup> January. I suspect that if Christmas had not intervened that would have happened slightly earlier.

36. My role from mid March 2020 was to ensure that the legislation and regulations which were needed to implement the lockdown and adapt essential services were all in place and continued to be in place, whilst also ensuring that the mechanisms existed to ensure that it was capable of being challenged and scrutinised effectively in the Scottish Parliament. That scrutiny underpinned discussion of the continuing need for the regulations to be in place and indicated the Scottish Government's view that they should only be used as required, and repealed as soon as possible. The efficacy of particular restrictions or exemptions were for others to decide and I expected them to do so on the basis of the best advice available at the time. As time passed and the flow of information to the Cabinet, co-ordinated by John Swinney, increased it was possible for me and other Cabinet members to make more informed judgements. My concern about public acceptability and observance, as opposed to necessity, increased during 2020 because I thought the complexity of what we were doing, particularly when we were dealing with "levels " meant it was harder to understand than simple "does" and "don'ts" that we had started with. That was particularly true with regard to the weekly consideration of the proper tier for each local authority area.
37. My role in consideration of particular decisions and the imposition of NPIs was as a Cabinet Member and, after a decision had been reached, as the person who would in most – but not all – cases sign the regulations bringing in any new or varied controls and then propose them at the COVID-19 Scottish Parliamentary Committee or, on rare occasion, in the Chamber if they were being challenged. Of course I also had to rigorously observe them myself. I worked from home as much as I could and although the Parliament was slow in introducing an effective hybrid system, when it worked it was possible for me to, for example, deliver a statement and be questioned on it. It was however not always possible to do so given technological restrictions including the speed of broadband and therefore I was present in Parliament from time to time.

38. The importance of the daily televised media briefings by the First Minister (on most occasions though others joined her and occasionally substituted for her) cannot be underestimated, both in terms of their content and the honest presentation of the facts. In particular the role of Nicola Sturgeon in providing clear and calm advice with empathy was a major factor in ensuring that Scotland understood and observed the regulations and was aware of changing advice, for example in the use of face coverings which was not mandatory at the start of the first lockdown but then became a major tool for control of the virus as a result of changing medical advice, in this case from the WHO.
39. As time went on the wider implications of the restrictions and changes to what had been normal life became more concerning not only in terms of overall wellbeing and the strains of not being able to socialise with wider family and friends but particularly in terms of school closures, individual and collective economic pressures and the impact on the vulnerable and protected groups. There was always a balance to be struck between what were perceived as imperatives in terms of containing the virus, particularly before the availability of vaccines, and the possibility of harm being done to those groups and wider society. This required all of us involved in decision making to consider the effect of our actions and the regulations on ourselves, our colleagues, our neighbours as well as on particularly vulnerable groups and try to align the four harms strategy with the changing requirements for restrictions as the effect of the virus ebbed and flowed during 2020 and early 2021.
40. Balancing considerations was a crucial part of the overall management of the pandemic in a variety of ways – for example John Swinney, as Education Secretary, played a crucial role in trying to manage demands for a return to school from some organised parent groups, whilst trying to secure opportunities for home study and work out pathways for a return to the classroom, being all the while mindful of the mental health and learning impacts on individual young people.
41. The successes in handling the pandemic in Scotland included the willingness of the Government at every level to bend all its efforts to protecting the population and defeating the threats to well being – health, economic and community – and the strong performance of key figures in communication and leadership. I was not close enough to those securing scientific advice to know how well that worked but the strategic planning, managed by the Deputy First Minister, was effective. The rise of a new form of localism in my own constituency, in which communities worked together

to support individuals was also impressive. The chief missed opportunity I can identify at present is the failure to capitalise on those successes in the longer term, with silos being re-established in Government and across the public sector and with the financial crisis - exacerbated in the UK by Brexit - threatening the very local services and initiatives which had proved so useful.

#### **D: Divergence**

42. It is in my view not only difficult to look for and find a “date or point in time” at which “the Scottish Government’s approach to the pandemic began to diverge from the UK Government” but it is also an exercise which does not take into account the structural and operational realities of devolution in general and the NHS in particular. As far back as 1919 a separate Scottish Office Board of Health was established and several subsequent administrative reforms led to the establishment of a separate Scottish Home and Health Department, with a Scottish Office Minister responsible for it in 1962. On devolution these responsibilities were transferred to the new Parliament which, because Health was now devolved, could also legislate for the subject. Scottish Government Ministers are responsible to the Scottish Parliament for the delivery of the NHS in Scotland which approves their decisions and actions, or otherwise. That has led to continuing and perfectly natural differences in operation and policy – for example the list of approved drugs is slightly different in Scotland and the approval of medicines is done in a different way. This also negates the question about whether divergence was “necessary” or “appropriate” because some degree of difference was actually hard baked into health service delivery and has been for longer than devolution. A high degree of cooperation at every level was also part of the relationship of course and a complete interchangeability of staff with medical qualifications being one area not devolved.

43. My view of divergence is therefore coloured by the actual situation on the ground. Certainly given the nature of the emergency an ever greater degree of co-operation was required between the four countries of the UK in order to provide the most effective and life saving response. Differences on what that should be, arising out of interpretations of scientific advice as well as concerns for individual well being, the national economies of the UK, Scotland and Wales, the protection of vulnerable groups and local variations in capability and need were inevitable and goodwill was always required as well as a determination to serve the public interest. I think by and large that happened but there were frustrations and on occasion the First Minister

decided, or considered, whether her duty to Scotland and the state of the pandemic on the ground in the country required a different approach. That was clear to me before lockdown when considering large scale gatherings, as I have indicated above. It was also an issue when considering travel bans and was probably germane to other decisions of which I was unaware. However good practice was also in evidence, for example in the work done to ensure an equitable distribution of the vaccine and in terms of the overall approach of the Scottish Government I am in no doubt that it was predicated by a desire to ensure close co-operation with the UK and to take the most effective co-ordinated action.

44. The only way that a completely unitary response could have been imposed would have been if the UK had suspended devolution, in whole or in part, which of course the UK Parliament is able to do. However that would have undoubtedly led to greater confusion as no UK Minister or senior civil servant in England had experience of running a differently organised Scottish Health Service. In a different context some of the issues involved in such unilateral emergency action had been privately discussed very informally in 2018 during early consideration of the possibility of a Brexit “no deal” but given the problems that would flow from it a very senior UK Minister had given me an assurance that they did not intend to take such a step. I think that the lesson had probably been learned.

45. It is true that a complicating factor was that the relationship between the governments was poor, and getting poorer, in the run up to January 2020. Brexit had put not only a huge strain on the structures of co-operation but it had also exposed significant hostility to devolution within the UK Government, elements of which spilled over into the handling of COVID (for example background briefings from the UK Government alleging lack of confidentiality from the First Minister and others). The focus on avoiding a no deal Brexit, which failing finding ways to mitigate it, absorbed a huge amount of Scottish Government time and effort with an unprecedented degree of cross portfolio input. A Ministerial Group on EU Exit Readiness was established and met regularly and the Scottish Government published a detail report on what it was doing in this regard in October 2019 [MR/008-INQ000346159]. Although the Brexit cliff edge of 31<sup>st</sup> October of that year was avoided there was still the need to devote significant resource to ensuring that arrangements were in place for Brexit, even though Scotland had not voted for it.

46. It was against this background that the pandemic struck and it is to the credit of all involved that they attempted to work closely together to the best of their ability in order to ensure that good practice was shared, joint action taken if that would be beneficial and advice and experience shared promptly and comprehensively. This worked well at official level and official contacts were often the backbone of successful co-operation during devolution before Brexit though many of those arrangements and relationships had been damaged by Brexit. It also worked at Governmental level when there were practical issues to be considered and where there was mutual respect.
47. In the Scottish Government there was undoubtedly a view that that Johnson in particular was disengaged and unsympathetic to co-operation owing to his hostility to devolution. Johnson for example had not held a JMC Plenary in his time in office even though the MoU required at least one a year. In contrast whilst there were always difficulties in working with Michael Gove (something I had done when we were both Education Ministers and again when he became Chancellor of the Duchy of Lancaster with responsibility for the Union and the JMC) he performed a positive and at times pivotal role in co-ordination and consultation during COVID-19 and did so, on the surface at least, with respect for the devolved governments.

#### **E: Role in relations to medical and scientific expertise, data and modelling**

48. I had no role in relation to providing facilitating or enabling medical or scientific advice. Briefing and information arrangements worked well with regular contact with the CMO via Cabinet and with him and the National Clinical Director, Jason Leitch with regard to presenting regulations to the Scottish Parliament COVID-19 Committee and answering their questions on regulations.
49. As far as I was concerned the full scientific picture was always well explained, the strategic information presented to Cabinet was comprehensive and the debates upon it increasingly well informed as time went on.

#### **F: Role in COVID-19 Public Health Communications**

50. My role in public health communications was only in regard to work on legislation and regulations, and publicly fronting those when required. I would therefore appear on radio or tv only to explain a regulation or a piece of legislation and played no other

part, for example in the daily media briefings. These were of exceptional importance and were a major success. The First Minister, the Health Secretary, the Deputy First Minister, the CMO and the National Clinical Director – with others taking part on occasion – tackled them with professionalism and courtesy and were always open to question. Public confidence in the leadership being shown was high although after a period the opposition parties and the media became critical.

51. The Catherine Calderwood incident in April 2020 could have been very problematic given that it suggested that a senior figure regarded the regulations as not applying to her and her family. It was regrettable, not least because her input was very important in the early stages but it was clear that she could not continue in office if the vital credibility of public messaging was to be maintained. The right decision was made and it also had the effect of reminding everyone involved about the need not only to observe the regulations but to be seen to be doing so. The very minor infringement in December 2020 by the First Minister when she forgot to replace her facemask when speaking to people at a funeral had the effect of re-enforcing that message, but in its coverage also revealed that the deep divisions in Scottish politics and the media were re-emerging after a welcome period of greater unity of purpose and national solidarity.

#### **G: Role in public health and coronavirus legislation and regulations**

52. As I have indicated my main task during the pandemic, until my retirement in May 2021, was with regard to the legislation and regulations.
53. At some stage between 15<sup>th</sup> March and 17<sup>th</sup> March I was asked to take forward the Legislative consent motion (LCM) for the UK Coronavirus Bill. I have no recollection of when that was and it may be that I took responsibility because I had greater experience of handling LCMs and relationships with the UK than most other Ministers. The record confirms that I first spoke publicly about it on Tuesday the 17<sup>th</sup> of March in a press comment. I made a statement about the LCM in the Scottish Parliament on Thursday 19<sup>th</sup> March and it was published on the following day.
54. The LCM went through the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee on the morning of Tuesday 24<sup>th</sup> March (the day after lockdown) and through the full chamber that afternoon, being approved at the end of the session. The Parliament then adjourned until Tuesday 1<sup>st</sup> April when the

First Scottish Emergency Bill was approved in all its stages in a unique session which also involved four ministers in presenting parts of it to the Chamber.

55. The bill was wide ranging and, as with the UK Bill, contained significant restrictions on normal life, which would have been unthinkable even a few weeks before. The fact that there was a virtual unanimity about the need for these restrictions and comparatively little discussion regarding the ethics and principles behind such decisions. Professor Adam Tomkins, a regional MSP from Glasgow, made the most telling contributions on that matter over the period in question both in Committee and in the Chamber and also brought forward the need for re-consideration in some specific areas, especially the right to marry. In terms of the detail of the bill the three most contentious items turned out to be not those wider issues of civil liberties themselves but three matters related to the detail of such concerns, namely specific proposals for reporting on the restrictions and use of the powers in the bill, the temporary closure of the law courts and a temporary reduction in the scope and powers of freedom of information legislation, the latter necessitated by the re-orientation of staff time and effort to front line pandemic action.
56. On the first I agreed to a rigorous reporting timetable which I developed with officials with the two month commitment explicitly confirming that the Scottish Government did not want the special powers to be on the statute book for any longer than necessary. On the issue of courts the Scottish Government agreed to withdraw its proposals and bring them back to the chamber after the Easter recess, though in fact it took longer than that to resolve the matter. On Freedom of Information I followed the advice of the Commissioner but the issue went to a division, which was won by the government on the Presiding Officer's casting vote. That was not a satisfactory result and I subsequently attempted to institute new procedures for access to information involving a dedicated email address for MSPs use, though that was not a successful innovation given the volume of work that it produced for already hard pressed staff, the difficulty of providing timeous answers to every query and the over use of it by some MSPs. None the less the large degree of buy in and support from opposition parties with regard to the first bill was very important and a very significant aid to its speedy passage. This reflected the uniquely serious and threatening environment at the time
57. The second emergency bill was introduced to the Parliament on the 11<sup>th</sup> of May and completed its passage on 20<sup>th</sup> May. Once again the purpose of the bill was to deal



only with those matters that were “urgent, necessary and unavoidable” and had been identified as such by Scottish Ministers. This bill was narrower in scope with fewer items of contention. It was also more closely scrutinised, including by the newly appointed COVID-19 Committee of the Parliament. One of the recurring issues in regulations and in further discussion as the pandemic proceeded was the limitation on church services and the sacraments, particularly marriages and funerals.

58. My primary role at this time was to secure the required legislation, report on it to the chamber as required and make sure that it was followed by appropriate and effective secondary actions. I was essentially acting on decisions reached by others including at Cabinet and in sub groups but of course I had been, as a Cabinet member, also involved in making those decisions. Cabinet received some feedback as time went on concerning how the regulations were being viewed and observed with usefully behavioural data being provided as well as the cruder indicator of charges brought and police action. The police acted, as far as I was concerned, with discretion and care and I had few if any complaints as a local representative with regard to that matter. Indeed in some places constituents asked for more police action, particularly with regard to suspected breaches of lockdown by people working away from home on those construction projects of national importance which had not been halted and from individuals who were visiting what were holiday homes, using “essential maintenance” as an excuse. However I did have some concerns about compliance as the year went on and the process of assessing levels of lockdown became more complex. Those concerns were about the growing detail of the regulations and the ability of people to keep up to date with them rather than the need for continuing restrictions.

59. Between 1<sup>st</sup> April 2020 and 22<sup>nd</sup> April 2021 I signed 40 regulations and three bills. A list of these has been provided to the inquiry [MR/009-INQ000346160]. In addition to the two emergency Bills I also signed the Scottish General Election Coronavirus Bill which instituted some changes to electoral practice in the light of the continuing pandemic. Although electoral law was within my portfolio I designated my Deputy Minister Graeme Dey as the Lead Minister for this bill and although I met with some of those involved in advising on the issues covered by the bill including the Chair of the Electoral Board for Scotland, I did not lead on the Bill as it went through its Parliamentary stages.

## **H: Key challenges and lessons learned**

60. The Cabinet minutes, outcomes and other papers record decisions made and some contributions I made. There is a full account verbatim account of all my statements and actions on legislation in the Parliament's Official Report including all committee appearances as well. The full two monthly reporting documents can be made available to the inquiry [MR/001-INQ000346153] [MR/002-INQ000346154] [MR/003-INQ000346155] [MR/004-INQ000346156] [MR/005-INQ000346157] and [MR/010-INQ000346161]. After I retired in May 2021 I played no further role and have not been part of any "lessons learned" activity.
61. My statement above indicates the key challenges I faced. In general the work on legislation went well with exceptional input from Scottish Government officials, Parliament staff and MSPs. The work on regulations became more difficult as time passed and as political resistance to regulation increased as well as understandable fatigue from the wider population. By the start of 2021 with a Scottish Parliament election looming, regulations became a proxy political battle ground although the majority in the Parliament still realised the need for them and the requirement to have the continuing restrictions observed as closely as possible. Once the vaccination programme started the fall in infections was obvious and sustained and that helped to reduce the amount of regulation that was required.
62. Establishing effective scrutiny arrangements for regulations took longer than it might have done. At times it was the Government that made the running about matters which should have been taken forward by the Presiding Officer. The Parliament was also slow in putting in place effective and efficient hybrid procedures which would have assisted that matter though Parliamentary staff worked very hard to do so.
63. These issues were however not as important as the obvious need from the beginning to focus all energy and resource on the pandemic to ensure that the people of Scotland were protected and were able to come through the difficulties. Where that worked – for example on the issue of rough sleepers – it should have provided a lesson for the future. So should the emphasis on localism which served communities well, particularly in rural areas. It has also become clear as a result of the pandemic that individual need and protection is crucial in any emergency and that a detailed brush is needed as much as a broad one. The difficulties that some people had, and still have, in adapting after the lockdown is an illustration of that point but also

reminds us that the pandemic – and the actions taken to attempt to contain it – will have long term consequences, not all of which we presently know.

64. Above all a future preparedness plan for a pandemic should be about how resources and actions needed to be focused completely and immediately on key issues without delay. Wider lessons also need to be learnt from elsewhere. On occasion as External Affairs Cabinet Secretary I did draw my colleagues attention to things happening outwith Scotland and the UK – for example concerns about care homes in Canada which I discussed with the then Canadian High Commissioner and the virtual collapse of some of that system. The lessons from that not only contrasted with a better situation in Scotland but also to need for reform of the care system here. One other function that I performed, within that role, was to hold regular briefings on the Scottish COVID-19 situation for the Consular Corps in Edinburgh. These on line meetings, held every few months, appeared to be appreciated and were well attended.

65. Finally I would stress as I did in my response to Section D that the devolved system was not in my view a distraction, but merely a given. More might have been done to secure an effective and trusting relationship between the four nations and particularly between Holyrood and Westminster. However the fact that Brexit had increasingly overshadowed that relationship before the pandemic took hold was a regrettable, but very germane, reality.

#### **I: Informal Communications and Documents**

66. I am not a member of any What's App or other groups regarding these matters and unaware of other documentation, apart from those items mentioned and provided by the Scottish Government, that would be relevant to the inquiry.

#### **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.

# Personal Data

Signed: \_\_\_\_\_

Dated: 11/12/2023