

Witness Name: Jeremy Miles MS

Statement No: 1 in M2B

Exhibits: 271

Dated: 13 December 2023

UK COVID-19 PUBLIC INQUIRY

WITNESS STATEMENT OF JEREMY MILES

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 30 June 2023 and referenced M2B/WG/JM/01.

I, JEREMY MILES M.S., will say as follows: -

Introduction

1. I would like to offer my heartfelt sympathies to all those who have suffered as a result of Covid. Thousands lost their lives to the pandemic. Many of us have lost family and friends, many more have suffered serious ill health themselves. Beyond the experiences of personal loss and ill health, countless other people took on huge burdens in the course of providing the support and care that we all came to rely on and on which so many people were entirely dependent during the worst of the pandemic. I am so grateful to them for their absolute dedication and care and for putting the interests of so many other people before their own.

Background

2. I was born and brought up in Pontarddulais. I studied law at New College, Oxford before initially teaching law at Warsaw University in Poland. Thereafter I practised as a solicitor in private practice, before taking up senior legal and commercial posts in media sector businesses. After returning to live in Wales, I set up my own consultancy working with

international clients in the broadcast and digital sectors. I served as a trustee and secretary of the social justice charity, the Bevan Foundation.

3. I was first elected to the Senedd for the Neath constituency in 2016. I was initially a member of a number of Senedd Committees, including the Economy, Skills and Infrastructure Committee, the Culture, Welsh Language and Communications Committee and the External Affairs Committee.
4. I was invited to take up the role of Counsel General in November 2017. I was sworn in as the Welsh Government's Counsel General on 13 December 2017. Following the election of Mark Drakeford MS as Welsh Labour Leader and First Minister in December 2018, I retained this role, along with assuming the new post of Brexit Minister. This role became known as the Minister for European Transition from 13 December 2019. I continued to hold these roles until the Senedd elections in May 2021.
5. At that election, I was re-elected as a Member of the Senedd for Neath. I was then appointed Minister for Education and Welsh Language on 13 May 2021. I continue to hold this role. In the first part of this witness statement, I discuss my role as Counsel General. In the second part of this statement, I discuss my role as Minister for Education and Welsh Language.

Role of the Counsel General

6. The role of Counsel General is created by section 49 of the Government of Wales Act 2006 ("GoWA"). In short, the Counsel General is the Welsh Government's Law Officer. The core function of the Counsel General is summed up in the Ministerial Code, which describes the role as "the final and authoritative legal adviser to the Welsh Government." I exhibit a copy of the Ministerial Code as **MEWL/01-01 - INQ000066055**.
7. The Counsel General need not be a Member of the Senedd, although the Counsel General often is (as I was at the relevant time). By section 45(1)(c) of GoWA, the Counsel General is a member of the Welsh Government (along with the First Minister, the Welsh Ministers and the Deputy Welsh Ministers). While I held the title of Minister for Brexit or for European Transition (depending upon the description of my portfolio at that particular time), I was not one of the Welsh Ministers and GoWA provides that the Counsel General may not be appointed as such (see section 49(6)). The Counsel General attends Cabinet at the invitation of the First Minister.

8. The responsibilities of the Counsel General include:
- a. providing legal advice to the Government;
 - b. overseeing the work of the Legal Services Department which provides legal services to the Welsh Government;
 - c. overseeing prosecutions on behalf of the Welsh Government;
 - d. overseeing representation of the Welsh Government in the courts;
 - e. considering whether bills passed by the Senedd need to be referred to the Supreme Court for determination as to whether they are within the Senedd's competence (exercised independently of the Government).
9. The Ministerial Code applies to the Counsel General as it does to all Welsh Ministers and Deputy Ministers. Collective responsibility applies to the Counsel General save that there are certain functions in respect of which the Ministerial Code expressly exempts the Counsel General's functions so that he can act independently. The Ministerial Code explains the role played by the Counsel General as follows:

6.6 All Cabinet papers are circulated to all Cabinet members. However, prior to that it is essential that they are seen and, if necessary, discussed in draft by those ministers whose portfolios are directly affected. This includes in particular the minister responsible for Finance and the minister responsible for Welsh Government Business. They must also be based on full legal advice from the Legal Services Department in consultation with the Counsel General, and include a proper appraisal of any financial implications. Cabinet papers must not contain any unresolved financial issues. Cabinet Secretariat will, with the First Minister's agreement, decline to circulate papers which do not meet these requirements, with the result that discussion of that item will be deferred. ministers should bear these points in mind when clearing papers for circulation.

6.18 It will be appropriate to seek the Counsel General's opinion on certain legal questions, typically, those of greatest legal complexity, or political controversy or sensitivity, or which have the widest implications. The Counsel General's opinion should be sought via a reference from the Director of Legal Services. Whilst in exceptional situations, it may be necessary and appropriate for a minister to seek the Counsel General's view directly, any formal written advice from the Counsel General must be sought on instruction from the Director of Legal Services. The Counsel General's opinion, or advice from the

Legal Services Department, must be sought in good time before the Welsh Government is committed to critical decisions involving legal considerations.

6.19 Written opinions of the Counsel General, unlike certain other ministerial papers, are generally made available to succeeding Administrations. The fact that the Counsel General has advised (or has not advised) and the content of advice given by the Counsel General must not be disclosed outside the Welsh Government without the authority of the Counsel General.

10. This last sentence reflects what is known as the Law Officer's Convention. As I have explained, the Counsel General is the Welsh Government's Chief Legal Adviser. However, given the size, nature, and breadth of the Welsh Government's work it is not possible, nor necessary, for the Counsel General to be involved in every matter which requires legal advice. Rather, the approach adopted is to ensure that systems are in place to ensure that legal advice is provided across government and in particular to Ministers when taking decisions in respect of their own portfolio or at Cabinet; and secondly to place the Counsel General at the heart of discussions around legal issues and advice, on a regular basis, with regular dialogue between the Counsel General, Legal Services and Office of Legislative Counsel. As I set out below, those regular meetings meant that I was abreast of ongoing legal issues, able to guide discussion, test emerging thinking and advice as required and, ultimately, that the Director of Legal Services and her lawyers were able to advise across government's work.

11. There are no hard and fast rules as to when the Counsel General will become personally involved in the provision of legal advice, but lawyers in the Legal Services Department will consider factors such as the complexity, importance and political sensitivity of a matter when considering whether to raise a particular issue with the Counsel General. There will be occasions where the Counsel General identifies particular policy developments where he wishes to be especially closely involved in the development of the legal advice. It is important to note at the outset that the role of the Counsel General is as much about governance and systems as it is about the actual provision of advice. There are specialist departmental lawyers working across the Welsh Government who deal, on a daily basis, with significant and complex legal issues. The Counsel General will liaise regularly with the Director of the Welsh Government's Legal Services, as well as with Deputy Directors, to ensure that he is directly involved in the development of legal advice, in discussion with those senior lawyers.

12. However, that advice is almost always ultimately delivered by Legal Services either as part of Cabinet papers, contained in Ministerial Advice (“MAs”), or as standalone advice. It was not my practice, nor has it been the practice, as I understand it, of any Counsel General, to receive formal instructions and thereafter to advise Cabinet in writing.
13. I do not recall any occasion on which my view, and my legal advice, differed to the legal advice ultimately provided by Legal Services. That should not be viewed as a lack of willingness to challenge on anyone’s part, but rather a testament to the continuous dialogue between myself, Helen Lentle (Director of Legal Services) and Dylan Hughes (First Welsh Legislative Counsel) and their respective teams which ensured that there was an opportunity to question, test and discuss legal advice as it was developed in relation to matters in which as Counsel General I was myself involved. During my time as Counsel General, I had complete confidence in the ability of the Legal Services Department.
14. The Counsel General is sent a copy of MA documents at the time they are submitted to the Minister. I am often listed as a “copy Minister” on MAs: and having made enquiries of my Private Office I can confirm that the working practice was that any MA in respect of which I was specifically identified as a recipient would be provided to me immediately. The Counsel General is separately a mandatory copy list member of all MAs (as there is a requirement in each MA to provide legal advice where this is relevant to the decision). Where I was not specifically named on the MA, but sent a copy in that other capacity, then my Private Office would take a view as to whether or not I required sight of that particular MA: my Private Office estimates that some 60% of those MAs were provided to me. In those situations, given that it was not urgent work nor did it require a decision from me, my Private Office would provide those to me to read with less urgency. I would then read the relevant MAs and could provide any comments or questions for consideration by the relevant Minister or officials as necessary.
15. The Counsel General’s role remained essentially the same during Covid: though of course the fast-paced process of drafting regulations and the nature of the public health emergency shifted priorities and meant that work was undertaken at an unprecedented speed, both by Legal Services and by myself. Often my meetings with Helen Lentle and Dylan Hughes would occur in the evenings given the nature and timings of developments and policy decisions, and almost always remotely. From recollection there would not have been many days during the period of most intense activity when I

- did not have a meeting with either of those two individuals. That meant that I was kept abreast of the developing legal issues on a daily basis, and often multiple times a day.
16. There were a handful of occasions when Ministers or Deputy Ministers would come to me directly with queries about legal issues. I was clear that the main source of legal advice for Ministers was that provided by Legal Services in their MA documents. The kind of questions would perhaps be to double check that I concurred with the legal advice, to query whether advice was too conservative or to ask whether there were alternative methods of addressing an issue. I was particularly careful about not creating a second channel of advice in parallel to what was provided by Legal Services. As such it was not my practice to provide legal advice directly to ministerial colleagues in response to such requests, other than where I would simply confirm that I agreed with the legal advice provided. I would sometimes respond either by noting the points raised and discussing that with Legal Services; or by noting that there may be alternative approaches which could be explored, and again discussing that with Legal Services.
17. The substantive response to any such ministerial queries raised with me in respect of legal advice always came from Legal Services: I was not an alternative source of advice for Ministers, not least because the concluded legal advice in MAs generally, and Cabinet papers in particular, was something which I had often had some involvement with, and was in agreement with.
18. As I note above, I was not and could not be a Welsh Minister. However, I would often be asked to approve draft regulations, guidance and other documents alongside the relevant portfolio minister. In doing so I was never exercising any functions of the Welsh Ministers but rather “clearing” these documents from a legal perspective. It was of course, particularly important that the guidance was consistent with the underlying legislation. Often that happened informally by way of e-mail correspondence, but on occasion I would be asked to “clear” decisions through a more formal MA process.
19. Legal advice provided to the Welsh Ministers is covered by legal professional privilege. The Law Officer’s Convention means that the fact of seeking advice from myself as Counsel General, and the content of that advice, would not usually be disclosed. However, for the purpose of this Inquiry, the Welsh Ministers have agreed to provide the Inquiry with privileged material. The First Minister has agreed (with the consent of the current Counsel General) that my involvement in the provision of legal advice and, where relevant, the content of that advice, may be disclosed to the Inquiry. I understand

that the solicitors acting for the Welsh Government informed the Inquiry of its position in correspondence. The Inquiry in turn set out the agreed position in its letter of 26 October 2022 which confirms that if, following the Inquiry team's consideration of the disclosed documents, the Welsh Government wishes to assert privilege, then it may do so.

Key Individuals

20. The Counsel General does not ordinarily have a Special Adviser given the nature of the role. However, given the additional co-ordination responsibilities I took on during Covid, I worked closely with the First Minister's Special Adviser, as elements of the work naturally had a cross-government dimension (but not in relation to the provision of legal advice).
21. I also had a Special Adviser working with me on the Brexit, or latterly European Transition, portfolio. During Covid, they also supported my work in relation to the Star Chamber, in chairing Covid related roundtables and in the work of the External Advisory Group, with which I deal below.
22. During my time as Counsel General, I was supported by the staff in my Private Office, including a principal private secretary, and a diary secretary.
23. I worked closely with Helen Lentle, Dylan Hughes, Terry Kowal (one of the senior legislative counsel responsible for drafting Covid regulations) and their teams.
24. Given that for long periods neither I nor most of my Ministerial colleagues were working in the Welsh Government offices either at Cathays Park, or Ty Hywel in Cardiff Bay as we ordinarily would be, it was inevitable that queries that would normally be raised on a face-to-face basis were discussed by other means. Usually, this took place by way of Teams meetings or telephone calls. From memory, most of my work, in common with most Ministerial colleagues, was done remotely from home, and on occasion at Cathays Park in Cardiff.
25. The Welsh Government does not permit the use of WhatsApp on official mobile phones. I did however use my personal mobile phone to send WhatsApp and text messages. It was my practice from before the pandemic to periodically delete messages from my phone and that continues to this day. I have used automatic deletion for WhatsApp,

from when that function became available but I do not now recall when that would have been. I also from time to time manually delete or clear out messages. This applies mainly to messages from work colleagues (as it is a personal phone) although I do delete some personal messages also. Therefore, in the main, I have not retained any messages I sent or received during the pandemic. However, I have located two WhatsApp group discussions which survive and which have been provided to the Inquiry. The first of these is a short exchange of messages with Ken Skates and Lesley Griffiths. The second is a short exchange of messages with Helen Lentle and Dylan Hughes. I was a member of a "Ministerial WhatsApp" group. I have not retained any of these messages, but I understand that copies of these messages have been provided to the Inquiry by other members of that group. WhatsApp was not used to make or record decisions. I would also have exchanged WhatsApp or some other form of text messages with other Ministers, Special Advisers and senior officials but not for the purposes of decision making. I have retrieved a number of text message exchanges between me and, variously, Helen Lentle (Welsh Government Director of Legal Services), the First Minister, and a number of other Cabinet colleagues. I have arranged for these to be disclosed to the Inquiry.

26. I also exchanged WhatsApp messages with my Senior Private Secretary and Special Advisers and iMessages with my Senior Private Secretary. I understand that neither my Senior Private Secretary nor my current Special Adviser has retained these messages either. I can confirm that I did not use a personal email address to conduct Government business.

27. I have tried to retrieve messages which may have been deleted as I use a general automatic backup on my personal phone. I have restored my WhatsApp application on my phone, to try to capture any data in backup files, but I have not located any further messages. I have also been unable to separately access the automatic backup files. I have also checked on my home computer to see if any of the backups are stored there and have not located any WhatsApp messages, but I have located some backed up text messages and have arranged for messages relevant to the Welsh Government's response to Covid-19 to be disclosed to the Inquiry.

Decision making during the pandemic

28. The core decision making body during the pandemic was the Welsh Government's Cabinet. The Cabinet is usually chaired by the First Minister, and the principle of collective responsibility applies. Cabinet met regularly. We initially met in-person, but as matters progressed, we quickly switched to meeting either entirely virtually or on a hybrid basis (with some Ministers present in Welsh Government offices and others joining virtually). Cabinet usually meets once per week, on a Monday. We met more frequently during the initial stages of the pandemic and continued to meet more frequently as and when required. The First Minister expanded attendance at Cabinet during the pandemic, so that all Deputy Ministers attended. There would be an agenda for the Cabinet meeting, and usually a full set of Cabinet papers.
29. There was usually legal advice which set out the legal analysis relating to any paper being considered at Cabinet, and in particular addressing any recommendations that were being made to Cabinet or relating to regulations that Cabinet was being invited to consider. Applicable legal advice was included within the Cabinet papers and therefore was available to each Minister when considering the relevant paper. There were occasions when legal advice was provided by means of a separate note. Ministerial calls operated less formally but almost always with an agenda and often with briefing papers.
30. I have explained above that the Ministerial Code required Cabinet papers to have been approved by Legal Services and the Counsel General. In practice, in my discussions with Legal Services, we would address legal matters likely to arise in matters coming before the Cabinet in the weeks ahead. I would then receive a "Legal Advice in Cabinet Papers" briefing from Helen Lentle, together with Cabinet papers for the next upcoming Cabinet meeting. That briefing would include relevant legal issues that were to be raised at the meeting together with other issues that were on the horizon for Cabinet papers for the next month or so.
31. The briefing was copied to Dylan Hughes, to senior lawyers within the Welsh Government Legal Services, and to the First Minister's Special Adviser. The briefing was not provided to other Ministers.
32. The "Background" section to the briefing set out in standard form that:

2.2 This paper provides details of final or emerging legal advice on forthcoming Cabinet papers. When the advice is finalised further background briefing is provided if appropriate. Where the advice is provisional the paper provides an opportunity for the Counsel General to contribute to the final legal advice to the Cabinet Secretary responsible for the paper.

2.3 Legal advice may be contained in the Cabinet paper itself or, perhaps more commonly, may form part of the advice to the Cabinet Secretary when agreeing the content of the Cabinet paper. Many Cabinet papers do not contain any legal advice. There are occasions where Cabinet papers are commissioned or produced in close proximity to the relevant Cabinet meeting which may prevent consultation with the Counsel General on the basis of this paper. In those cases it will be necessary to discuss any legal advice content separately and at short notice with the Counsel General.

33. The usual approach would then be for me to meet with Helen Lentle to discuss that briefing paper. Ordinarily that meeting would take place on the morning of Cabinet: though the exact dates varied. During the pandemic, my meetings with Helen Lentle became more frequent.

34. I did not provide written legal advice to Cabinet. The legal advice would be drafted for inclusion in Cabinet papers by Legal Services, and my involvement in that has been described above. In Cabinet, it was my practice to explain that legal advice as clearly as possible and I would answer any questions about that advice.

35. I saw my role in Cabinet as being two-fold. First, as Counsel General, to explain in simple and practical terms what the legal advice was and why, and the implications of that for the matters under consideration. Occasionally the First Minister would invite me to explain particular legal issues; on other occasions matters would arise during Cabinet's discussion and I would advise on those issues as required.

36. Secondly, I played a full part in the substantive discussion and decision making process. I was a member of Cabinet and so contributed to the policy debate before Cabinet. Usually, decisions at Cabinet were reached by consensus. The issues would be debated, and the First Minister would sum up Cabinet's opinion on a particular paper. If there were aspects on which there was not a clear Cabinet view, further advice might be commissioned after the meeting. Given the frequency with which Ministers met during the pandemic, there were often opportunities for Ministers to return to aspects of

the discussion where there was not initially a clear Cabinet view, and agreement would then be reached. So far as I can recall, there was only one occasion when Cabinet did not agree on a way forward. This was at a meeting in December 2020, when the First Minister decided, in the absence of a clear preference expressed in the Cabinet's discussions, that additional restrictions over the Christmas period would be set out in regulations and not just recommended in guidance. I return to this below at paragraph 295.

37. Cabinet would take strategic decisions, which would then be implemented, either by individual Ministers after an MA had been considered, or by officials. When it came to reviewing Covid Regulations, Cabinet would decide on a particular way forward and that would in turn lead officials to instruct the relevant lawyers, usually the Office of Legislative Counsel, to draft amendments. As regards the 21-day review in particular, Cabinet would meet to discuss the Regulations then in place and any changes to the restrictions that were to be implemented. Those discussions were always done on the basis of the most up to date evidence, with advice addressing the particular matters that were being considered. Often, Cabinet would have the draft MA that would go to the First Minister for a formal decision in due course (as the Principal Regulations were made by the First Minister). On occasion, there would not be formal advice from the Chief Medical Officer (Wales) ("CMO(W)") in the papers before Cabinet, but the CMO (W) would provide advice orally at the meeting. As I understand it, there was always formal advice from the CMO(W) when the MA implementing the changes was submitted to the First Minister. The result of the above was that although the formal 21-day review and decisions in respect of the restrictions formally lay with the First Minister, the decision making process was firmly rooted in Cabinet discussions. Cabinet would decide on the way forward and if that differed from the proposals in the draft MA, for example, then policy officials and the OLS would make the necessary amendments to reflect those discussions before the MA was provided to the First Minister. There were occasions on which I would then discuss with Legal Services and OLC any legal matters arising from the Cabinet discussion. I return to the governance arrangements for the 21 day reviews below.

38. The First Minister established a sub-group of the main Cabinet, known as the Cabinet Covid Core Group ("the CCG"). This was established on 4 March 2020. The CCG met weekly, usually on a Wednesday. The role of the CCG was to share with partners new information and updates on major issues relating to Covid, generally matters which the Cabinet had already discussed, sometimes in the days before. It was not a decision

making body. The core membership of the CCG was the First Minister, the Minister for Health and Social Services (“the MHSS”), the Minister for Housing and Local Government, the Minister for Education and the Deputy Minister for Health and Social Services. I was not a core member of the CCG; however, other members of the Cabinet were free to attend, and I usually attended these meetings. I was sent the papers and minutes of these meetings, even when I was not able to attend. As an example, I exhibit the minutes of the meeting on 18 March 2020 as **MEWL/01-02 - INQ000215172** and 3 June 2020 as **MEWL/01-03 - INQ000311860**. A number of senior officials and Special Advisers also attended the CCG. The Leader of the Welsh Local Government Association (“the WLGA”), Andrew Morgan, attended at various points as did the leaders of the two main opposition parties in the Senedd. Depending on the matters being discussed, other representatives attended: for example, the Secretary of State for Wales attended on occasion, as did the Chief Constable of North Wales Police and the Chief Executive of the WCVA. The CCG continued to meet until August 2020.

39. As matters were moving so quickly, the First Minister also set up daily Ministerial Calls from 6 April 2020, where key information was exchanged and issues raised and discussed. We did not usually make decisions during these calls, unless the matter was particularly urgent. The discussions and action points from these calls were recorded in an email, which was circulated to the Private Office of all attendees after the meeting had concluded. As examples, I exhibit the action points relating to meetings on 6 April 2020, 9 April 2020 and 10 April 2020 as **MEWL/01-04 - INQ000271473**, **MEWL/01-05 - INQ000349305** and **MEWL/01-06 - INQ000349306**.
40. Ministers remained able to make decisions in their own portfolio areas, and these decisions would be made after consideration of an MA prepared by civil servants.
41. The First Minister also set up a number of bodies that were non-decision making, but which carried out important work and helped inform decision makers.
42. The first was the Advisory Group to the Minister for Finance, which came to be known internally as the “Star Chamber”. This was an advisory body set up by the First Minister on 25 March 2020, to advise the Minister for Finance on budgetary issues arising out of the unprecedented pressure placed upon the Welsh Government’s budget by the pandemic.

43. The Star Chamber was created to undertake two roles. First, to work with portfolio Ministers to repurpose funding from their budgets with a view to establishing a central fund from which the Welsh Government could support individuals, organisations and businesses affected by Covid. Secondly, to operate as an initial sift of policy options with a significant funding component, to ensure that, if the relevant portfolio Minister decided to proceed, they could be delivered (sometimes with support from the central funding resource which had been established). Largely that assessment was undertaken from a financial perspective, although it could consider broader issues with an impact beyond the portfolio of the relevant Minister. The intention was for the Star Chamber to provide 'soft approval' for MAs which would require financial investment before that policy proposal was formally approved by the relevant portfolio Minister (and as applicable to the Minister for Finance and Trefnydd if additional funding was required) for decision. The Star Chamber itself was not a body that was capable of deciding to go ahead with a particular policy or MA; but rather operated as the first stage in ensuring that it could be financed and delivered, before going to the relevant portfolio Minister.
44. I was appointed a member of the Star Chamber. I believe this was because my role as Counsel General did not involve the development of policy nor did I have responsibility for a departmental budget which was likely to require significant additional funding as a result of the pandemic. The other members were the Minister for Finance and Trefnydd and Damien O'Brien, a non-executive director of the Welsh Government board. I stood down as a full time member later in April 2020, when I took on other roles in relation to the pandemic. However, I continued to attend the Star Chamber on an ad hoc basis thereafter.
45. The group met for the first time on 25 March 2020 and meetings were held regularly thereafter – often on a twice weekly basis, although we were able to meet more quickly if urgent decisions were needed. The group was put on a more formal footing in April 2020, and Terms of Reference, which I exhibit as **MEWL/01-07 - INQ000320738** were agreed. I understand that the Minister for Finance has provided details about the operation of the Star Chamber, and I do not repeat those here.
46. As I explain further below, I was asked by the First Minister to lead a review of the Government's development of the lockdown Regulations, and to co-ordinate particular workstreams which involved the interests of more than one Ministerial portfolio (e.g. cross-government work on the vulnerable, and identifying key workers). I was also asked to co-ordinate aspects of our longer term response to Covid as a government,

- both internally and by engaging with external partners. My experience as Brexit Minister of working on complex preparedness projects with colleagues across a range of portfolios meant that I had experience of co-ordinating cross-governmental work.
47. My role in reviewing the operation of the lockdown Regulations was initially process driven. I worked closely with the Covid-19 Project Team, as well as with Legal Services and the Office of Legislative Counsel. I describe this process below.
48. In undertaking the work of co-ordinating workstreams, I worked closely with Special Advisers and with officials from Cabinet Office and the Covid-19 Project team working at portfolio level on specific projects and overall co-ordination work.
49. This was not a decision making role; my role was to ensure that there was early collation of Ministerial views and requests (both in terms of lifting and imposing restrictions) including my own in my capacity as law officer, so that Cabinet could consider those matters in a timely and informed manner. It was not my role to develop policy nor explore the evidential basis for policy decisions. Neither was this role an alternative route for me to provide legal advice. It remained for individual Ministers to present their policy ideas to Cabinet, in respect of which legal advice would be provided in the usual way.
50. With the benefit of hindsight I am of the view that the Brexit preparation work which we had undertaken as a Government had allowed us to develop effective ways of working across Government. Ministers and Welsh Government officials therefore had recent experience of working on a range of issues which emerged rapidly, in the same timeframe and which had significant cross-government implications.
51. My work to co-ordinate aspects of our longer term response to Covid was more strategic in nature. I chaired the internal Portfolio Board for Continuity and Recovery, which worked in parallel with the Continuity and Recovery Expert Group. The Board provided a forum to organise the programme of work, challenge internal barriers, and ensure an operating model needed to deliver at pace. It was to be an advisory panel rather than a decision making body, reporting to the First Minister, Cabinet and relevant portfolio Ministers, in the usual manner. Membership of the Board was kept under review as the work progressed, but its core membership included officials from teams encompassing health policy, health scientific advice, local government and communities, Welsh Treasury, Emergency Coordination Centre (Wales), Legal Services, economic policy

and environment. A shared secretariat was established to support both the internal and external groups, which reported to me as Chair.

52. I also chaired the Continuity and Recovery Expert Group. The work of the group was organised around the three strategic themes of economic, social and environmental justice, reflecting the three strategic themes of the Welsh Government. I held a number of preliminary round table sessions in May 2020 with a wide range of experts. We also ran a wide ranging consultation with stakeholders and open to the public asking them to send us their views on how we should support future post-Covid recovery and reconstruction. Over 1,000 submissions were sent to the dedicated ourfuturewales@gov.wales mailbox, set up for this purpose. With the agreement of the First Minister in June 2020, I convened a small core group of external advisers drawn largely from those who had participated in the roundtables, to operate as an Expert Advisory Panel on our post-Covid preparations. I discuss this work further below.

53. I understand that the First Minister has described the role of the Shadow Social Partnership Council (“the SSPC”). I attended when invited to do so. So far as I have been able to ascertain from the records, I attended the SSPC on 8 occasions as Counsel General – 14 May 2020, 28 May 2020, 11 June 2020, 25 June 2020, 20 July 2020, 7 September 2020, 22 October 2020 and 14 January 2021. By way of example, I exhibit the minutes of the meetings of 14 May, **MEWL/01-08 - INQ000314504** and 22 October 2020 **MEWL/01-09 - INQ000281906**. Where I have indicated in this statement an example of minutes only, the full set of minutes have been provided to the public inquiry.

54. I understand that the role of the Technical Advisory Cell (“TAC”) and the Technical Advisory Group (“TAG”) have been described by others. In broad terms, they were set up to provide scientific and technical advice to the Welsh Government. I did not attend any TAC or TAG meetings personally. The evidence and advice prepared by these bodies was provided to Cabinet.

Working with the UK Government and other Devolved Governments

55. I understand that the structures that have been in place since devolution for intergovernmental relations have been explained in the witness statement of the First Minister and of Andrew Goodall.

56. In March 2018, the Joint Ministerial Committee (“the JMC”) initiated the Intergovernmental Relations Review (“the IGR”). Part of my role as Counsel General was to represent the Welsh Government in the IGR. Work on the IGR stalled during Covid, but the Welsh Government continued to drive it forward as much as possible. We had put forward proposals for a new intergovernmental machinery, supported by an independent secretariat, and with new dispute avoidance and resolution procedures. The outcome of the IGR was not published until January 2022. I exhibit the review as **MEWL/01-10 – INQ000350719**. New structures were thereafter adopted. These structures do not reflect the entire ambition of the Welsh Government, but I believe they are an improvement on the arrangements which they replaced. Had they been in place during the pandemic, they might have led to the JMC structure being deployed at points during the pandemic in a way which the unreformed arrangements were not. I think that these new arrangements have the potential at least to result in more coordinated, UK-wide, decision making and could avoid some of the difficulties we experienced during the pandemic.

57. I had a number of concerns about intergovernmental relations during the Covid pandemic. I was invited to give evidence to the Public Administration and Constitutional Affairs Committee of the House of Commons on this issue on 23 June 2020 in a session on “Responding to Covid-19 and the Coronavirus Act 2020”. The session was also attended by Ministers from the Scottish Government and Northern Ireland Executive (Michael Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs and by Gordon Lyons MLA, Junior Minister in the Northern Ireland Executive). A copy of the transcript of the evidence session is exhibited as **MEWL/01-11 - INQ000338705**.

58. As I informed the Committee, by June 2020, there was no functioning intergovernmental machinery in place. The Joint Ministerial Committee structure that had existed since the start of devolution was not used. COBR was the only cross-Government mechanism in active operation, and it was a UK Government committee, convened at the discretion of the Prime Minister, to which representatives of the Devolved Governments could be invited. I did not personally attend COBR meetings about Covid (although I did attend COBR meetings about Brexit). The First Minister or the Minister for Health and Social Services (“MHSS”) would usually attend these meetings, and would then report back to Cabinet. “Read outs” of the meetings were usually circulated to Ministers and senior officials by email and verbal updates were given to Cabinet where relevant, as Ministers considered their response to the pandemic. COBR provided a good opportunity for

Ministers to discuss and reach judgments together, and I understand that there was a high degree of coordination at the outset. However, COBR did not meet at all during May to September 2020 and met only infrequently thereafter.

59. Ministerial Implementation Groups (“MIGs”) were in place for a time, after the COBR meeting of 16 March 2020. Four MIGs were introduced, covering Healthcare, General Public Sector, Economic (the Economy and Business Response Implementation Group, or “EBRIG”) and International. These meetings took place regularly throughout April and May 2020, but they were usually initiated by the United Kingdom Government, often at short notice, and with the agenda set by the UK Government. They were attended by the relevant Ministers from the UK Government and each of the Devolved Governments, together with officials. They were useful for sharing information, although decision making remained with the relevant Government. However, the MIGs were disbanded by the UK Government at the end of June 2020, without any consultation with the Devolved Governments. The MIGs were replaced by two Cabinet committees, one for operations (known as Covid-O) and one for strategy, known as Covid-S.

60. At the First Minister’s request, I attended General Public Sector MIG meetings on 15 April (on the issue of courts) and on 14 May (on food affordability and volunteering), 18 May (on border measures), 21 May (on vulnerable groups and disabled people) and 29 May and 2 June (border measures). I also attended the EBRIG meeting on 23 April. I exhibit example of the actions from the meeting on 15 April 2020 as **MEWL/01-12 - INQ000349335** and 14 May 2020 as **MEWL/01-13 - INQ000349459**.

61. From the end of April 2020, I understand that Michael Gove (the then Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office) started to hold regular calls with the First Minister, as well as the First Minister of Scotland and the First and Deputy First Ministers in Northern Ireland. The First Minister would report any relevant matters back to Cabinet. Ministerial calls also took place, as well as what were known as “Ministerial Quadrilaterals” (where Ministers from all four countries would meet virtually to discuss matters). However, these Ministerial calls were ad hoc and there was no formal structure that operated frequently and regularly.

62. It was my view, shared by the Welsh Ministers, that a set of intergovernmental institutions that had at their heart a level of parity between Governments was essential. COBR and the fora I have described above were able to support cooperation and information sharing, but they were not designed in that way. They were essentially UK

Government fora to which the Devolved Governments might be invited. As I explained to the House of Commons Public Administration and Constitutional Affairs Committee on 23 June 2020, that did not reflect the parity of Executive power in devolved areas across the UK. The Welsh Government continued to advocate for such institutions as part of the IGR.

63. During the Covid period, both the UK Government and the Welsh Government published reports on their respective engagement with other Governments. The first quarterly report on the UK Government's engagement with the Devolved Governments was published in March 2021, which I exhibit as **MEWL/01-13a – INQ000376582**. This report contained a summary of engagements that had taken place since July 2019. Quarterly reports have continued to be produced, along with annual reports into IGR activity. The Welsh Government has produced similar reports for scrutiny by the Senedd. I exhibit the most recent report that covers the period 2021 – 2023, as **MEWL/01-13b – INQ000376619**.

64. It was very rare for me to have meetings with the other Law Officers during the pandemic. This is not surprising: we did not have policy portfolios in the same way as Ministerial colleagues. There was an occasion when I wrote to the Attorney General about messages intended for an England-only audience being broadcast into Wales. I exhibit a copy of a letter of 13 May 2020 as **MEWL/01-14 - INQ000349454**. I also exhibit the Attorney General's response to my letter on 5 June 2020 as **MEWL/01-15 - INQ000349548**. On another occasion, I wrote to the Attorney General to press for Welsh citizens returning to the UK through English airports to be provided with information about the Covid regulations applicable in Wales. I exhibit this letter and the Attorney's response as **MEWL/01-16 - INQ000349651** and **MEWL/01-17 - INQ000349748**. It was vital from a rule of law perspective that citizens in different parts of the UK understood which laws applied to them. It was incumbent on Governments to be very clear about the territorial limits of any Regulations they were introducing. Unfortunately, this did not always occur in the case of the UK Government. I describe this further below.

65. I also had a call with the Lord Advocate in the Scottish Government on 17 May 2020 to discuss international travel Regulations and quarantine measures, which I exhibit as **MEWL/01/18 - INQ000349463** I refer to these decisions below.

66. I was aware that lawyers within Welsh Government Legal Services were liaising with their counterparts in the Government Legal Department over drafts over the progress

of the Coronavirus Bill, and on drafts of the early Covid regulations, when the UK Government and the Welsh Government were adopting similar positions. As the regulatory regimes diverged, that level of engagement understandably reduced.

67. I was not surprised or concerned by that divergence when it occurred. From the initial stages of the pandemic, all Governments were signed up to a “four-nations” approach. There were points when this was given particular priority, for example the approach to restrictions over the Christmas period of 2020, given the likelihood of people wishing to travel between different parts of the United Kingdom for the holidays, even though in the end there was divergence between the four nations. From the Welsh Government’s point of view, a four-nations approach meant doing broadly similar things in broadly similar circumstances, rather than necessarily doing exactly the same thing at exactly the same time. Each Government had to apply their own judgment and scientific advice to the evidence and the circumstances that existed in each part of the UK at any particular time. It was inevitable that circumstances varied in different parts of the UK – there were variations in transmission, variations in geography, variations in the population etc.

68. The scientific advice was prominent in decision making, and the scientific advice was closely co-ordinated between the four Governments. Each Government had a chief medical officer and chief scientific adviser, who met regularly and shared information. The Devolved Governments had representatives on SAGE. The Welsh Government set up the TAC and TAG, to interpret SAGE evidence in a Welsh context. However, even when working from the same scientific base, there were a range of choices to be made when it came to NPIs. There were inevitably choices to be made in balancing the various requirements of public health, the economy and wider social factors. It was the task of each Government to make those judgements and be accountable for them. I believe the Welsh Government’s overall approach was more precautionary than that of the UK Government.

69. As I explain further below, there were three particular issues that caused difficulties in the relationship between the Welsh Government and the UK Government.

70. First, the UK Government seemed at times wilfully indifferent to the impact of its communications on the different approaches taken by other Governments. Its announcement of the change in its approach, to a new if rather vague message of “Stay Alert” (when other Governments had decided to retain the “Stay Home” message) risked

confusion in the minds of those in Wales watching the Prime Minister's statement of 10 May 2020, as the Prime Minister's message did not specify that the change was confined to England. I was interviewed in relation to the changes on BBC Wales Today that evening and I emphasised to a Welsh television audience that the changes announced by the Prime Minister that day in relation to travel restrictions in England did not apply in Wales, and that travellers into Wales from England risked breaking Welsh law. I then took the unusual step of writing to Suella Braverman as the Attorney General to impress upon her the importance of clarity in the UK Government's statements in relation to law changes in England.

71. Second, the UK Government acted without proper consultation with Devolved Governments on crucial matters which were within the reserved authority of the UK Government, but which had a significant practical impact on Devolved Governments. A vivid example of this was in relation to its decision to relax quarantine rules for travellers returning to England from certain countries in July 2020. The UK Government seemed not to have thought through the implications of these changes before announcing them and failed to communicate with the Devolved Governments so that Wales could make its own assessment of the risk.

72. Third, in October 2020, Rishi Sunak, then Chancellor of the Exchequer, refused to extend the furlough scheme to Wales in response to the "firebreak" or "circuit breaker" we had introduced. This left Welsh workers and businesses dependent on less generous support, that the Welsh Government had to fund from our own (limited) resources. This was a clear example of HM Treasury not acting in the interests of all parts of the United Kingdom equally, in response to valid public health-related choices made by Devolved Governments. The sense of obvious injustice was compounded a few weeks later when the furlough scheme was then belatedly extended, but only in light of the decision of the UK Government to introduce a new lockdown for England. I felt at the time, and still feel today, that this action demonstrated clearly that the Treasury under Mr Johnson's Government was more likely to act in the interests of the Government in England than in the interests of the other nations. If this could even occur in the midst of a public health emergency of unprecedented magnitude, it made the case powerfully for fundamental reform of the inter-governmental machinery on public funding.

73. I do not recall any instances in the pandemic in which I used WhatsApp or text messages to communicate with the UK Government or other Devolved Governments.

Working with local authorities

74. There was extensive contact between the Welsh Government and local authorities during the pandemic. Discussions would take place through the SSPC, and Ministers would liaise with stakeholders from local government in their own policy areas. As I have explained above, the First Minister invited the Leader of the WLGA to attend the CCG and to attend the daily Ministerial calls.

75. Local authorities would often implement the decisions taken at Welsh Government level – e.g. when it came to repurposing schools from 20 March 2020, in distributing food parcels and protecting the vulnerable.

76. I also held a number of meetings or discussions with local authorities as part of the work that I was carrying out to review the lockdown Regulations, the cross-governmental work co-ordination work and my strategic work on recovering from the pandemic.

77. I was not part of a WhatsApp group with local authority leaders. I would have exchanged WhatsApp messages during this time with Cllr Andrew Morgan, the Leader of the WLGA, to share information, but not for the purpose of making decisions. I do not recall exchanging messages with anyone else at the WLGA at this time. Nor do I recall exchanging text messages with other local authority leaders (other than perhaps my own local authority leader in my capacity as a constituency MS). I have already explained above that my practice was to delete messages regularly and so I have not retained these messages.

Initial understanding and responses to Covid-19: January to March 2020

78. The preparedness work for Brexit gave me a good insight into Wales' emergency planning systems and infrastructure. This knowledge was not pandemic specific, however. I was also aware from Ministerial Advice in 2018 of the existence of flu pandemic national planning. I exhibit a copy of this MA as **MEWL/01-19 - INQ000349141**.

79. In January and February 2020, my focus was on leading our efforts as a Welsh Government to ensure that Wales, and we as a Government, were as prepared as

possible for Brexit and the consequences of Brexit. This was an enormous task. This encompassed the co-ordination of a range of portfolio-led preparatory projects ranging from food and chemicals imports, to the effects of immigration policy on the care sector, to convening cross-government projects which affected multiple policy areas, such as border infrastructure discussions with the UK Government. We developed a cross-government reporting process which enabled all Ministers to track progress across government and which was discussed at regular meetings of the Cabinet Sub Committee on European Transition which I chaired. Similar practices would later be developed to track our cross-government response to Covid.

80. I became aware of Covid-19 spreading in Wuhan in China in January 2020. Towards the end of that month, all Ministers began to receive daily updates on what was described as the “Wuhan Novel Coronavirus” provided by the Health & Social Services Group within the Welsh Government. I received the first of these updates on 28 January 2020 which is exhibited as **MEWL/01-20 - INQ000320708**. I exhibit examples of further updates from 29 January 2020 as **MEWL/01-21 - INQ000320709** and 31 January as **MEWL/01-22 - INQ000349147**. I knew that the World Health Organisation had declared the position in China to be a “public health emergency of international concern” by the end of January 2020. I was also aware that officials from Public Health Wales were meeting daily as part of the UK incident management team, and that Welsh Government representatives were attending SAGE from 1 February 2020. From the 11 February 2020, the Minister for Health and Social Services (“the MHSS”) made weekly Written Statements to the Senedd on Covid-19. I exhibit the Written Statement of 11 February 2020 as **MEWL/01-23 - INQ000320716**. On 11 February 2020, the CMO(W) provided an updated to all Senedd Members on the Covid situation.

81. The MHSS and the CMO(W) confirmed that initial public health guidance was directed to those returning from mainland China. I exhibit a Written Statement from the Minister for Health and Social Services on 4 February 2020 as **MEWL/01-24 - INQ000349153** and a press release from the CMO(W) on 7 February 2020 as **MEWL/01-25 - INQ000048723**. Travellers from Wuhan or Hubei province were asked to self-isolate for 14 days, even if they did not have symptoms, due to increased risk from that area. Travellers from elsewhere in China who developed flu-like symptoms were advised to self-isolate for 14 days. Guidance was given on reducing the spread of any respiratory virus: catch it, bin it, kill it and wash your hands. An awareness raising campaign in support of that message was underway, and Public Health Wales and the Welsh

Government were supporting the UK Government's hygiene awareness campaign launched on 1 February. Over coming days, guidance was updated advising those returning from other countries (such as Thailand, Japan, Republic of Korea, Hong Kong etc) to self isolate if they developed flu like symptoms. Travel advice was being provided by the FCO. The daily updates contained details of the enhanced monitoring arrangements that were in place for flights from higher risk destinations, and set out the advice provided by the CMO to those returning from high risk areas. The daily updates were also providing data about cases internationally, and in the United Kingdom. I did not have any involvement with providing public guidance at this time. However, I had confidence in the medical advice that the Government was receiving, and considered that these precautionary measures were adequate at this time.

82. Public health guidance was updated as the pandemic spread, and the FCO updated its travel advice, advising against all but essential travel to the worst hit areas. I was not aware of the Welsh Government monitoring and/or tracking people arriving in Wales from other countries during this time and do not believe that such surveillance was undertaken.

83. On 24 February 2020, I was asked to Chair a Cabinet Sub-Committee on the Welsh Government's legislative programme in the First Minister's absence. I exhibit the agenda of the meeting as **MEWL/01-25a – INQ000376427** and the minutes as **MEWL/01-25b – INQ000376606**. I recall that there was an item on the agenda about the Coronavirus Bill ("the Bill") being prepared by the UK Government. The Bill was based on the draft Pandemic Flu Bill prepared in or around 2018, which had been the product of working between the four Governments. I was not directly involved with the Bill at that point (I was to become involved soon after), but I was told by lawyers in Welsh Government Legal Services that at that point we had good input into the preparation of that legislation. There were positive levels of information sharing, discussion and joint working around the drafting of the Bill. The Bill included a number of powers within devolved areas, to be exercised by the Welsh Ministers. I was kept up to date with the progress of work on the Bill through regular meetings with the Director and Deputy Directors of Legal Services.

84. On 25 February 2020, Covid-19 was first discussed at Cabinet. The MHSS provided Cabinet with an update on Covid-19 and referred to his weekly Written Statements to the Senedd. The CMO(W) was providing regular updates to the public and had issued guidance for those suffering symptoms who had arrived from abroad. Travel advice had

been updated to reflect the increase in cases in a number of countries, including Italy. At this time, the worldwide response was still in the containment stage and the risk assessment was currently moderate. We were warned that this would change rapidly if there was sustained transmission in Europe or in any country with close connections with the UK. I was not involved in the development of public health guidance, including in relation to potential NPIs such as the use of face coverings, at this time.

85. On 28 February 2020, the first Covid case in Wales was confirmed.
86. Cabinet met again on 2 March 2020. I was unable to attend as I was representing the Welsh Government at a St David's Day event in London. I received and read the papers and reviewed the minutes thereafter. The minutes confirmed that the First Minister and the MHSS provided Cabinet with an update on Covid-19, and an update from COBR (which was now to meet twice a week). An update was provided on the Bill, and the latest information from the UK Government was that they intended the Bill to receive Royal Assent by the end of March. The four nations had agreed a UK Covid-19 Action Plan, which was published the following day. This Joint Action plan set out a phased response to the virus, to "Contain, Delay and Mitigate any outbreak, using Research to inform policy development". The Action Plan stated that the available data suggested that the risk of severe disease and death increases among elderly people and in people with underlying health conditions (in the same way as for seasonal flu). So far as I can recall, this was the first time I was aware of these groups' particular vulnerabilities to Covid. The Plan envisaged that NPIs might be needed to slow the spread of the disease through the population. But we were not yet at that stage. Work on a shielding plan for the extremely vulnerable was led by the MHSS.
87. The Action Plan was published on 3 March 2020 and is exhibited as **MEWL/01-26 - INQ000066061**.
88. A further ad hoc Cabinet meeting took place on 4 March to discuss Covid-19. The minutes of the meeting are exhibited as **MEWL/01-27 - INQ000048789**. Updates were provided on the frequency of COBR meetings and on the progress of the Bill, with further policy instructions expected later that day. It was recognised that the spread of the virus would have implications for every portfolio and Ministers would need to ensure that the necessary preparatory work was in hand. The CMO(W) provided a briefing to Cabinet on the latest risk assessment and advice. He confirmed that in the 8 weeks since the first reported case in China, there had been over 87,000 cases worldwide,

with just over 3,000 fatalities reported in China. There were also serious outbreaks in South Korea, Iran and Northern Italy. 51 cases had been identified in the UK, with more being reported overnight. So far, there was only one reported case in Wales.

89. The CMO(W) reported modelling by SAGE, which suggested that under the reasonable worst case scenario ("RWCS"), 80% of the population would be infected. Of those, 80% would have mild symptoms and the remaining 20% were likely to be hospitalised. This would equate to around 160,000 people in Wales requiring some form of hospitalisation; with 133,000 requiring oxygen and 14,000 requiring ventilator support. The same modelling suggested somewhere in the region of 25,000 deaths. An increase in cases was expected over the coming weeks, with significant escalation in April and possibly intensification into May and June. Multiple peaks could not be ruled out. We were all aware that if the spread of the virus followed this trajectory it would create huge challenges for the NHS. At this stage, a proportionate response was required. An update was also provided on UK Government mobilisation and Welsh Government governance structures for dealing with health and emergencies. A Welsh Government Covid-19 operating model had been produced. The need to share clear and accurate public information was emphasised and we received a briefing from the Head of Strategic Communications on these issues.

90. After this meeting, the new Cabinet Sub-Group met (this was the CCG I have referred to above).

91. Cabinet met again on 10 March 2020. I was not present as I was representing the Welsh Government in a meeting with other Devolved Governments relating to UK/EU Negotiations. Again, I reviewed the minutes when they were circulated which are exhibited as **MEWL/01-28 - INQ000129909**. The First Minister provided feedback from the COBR meeting which had taken place the previous day, and which had discussed when more restrictions on movement should be introduced. At this point, there were only 6 cases in Wales, and it was concluded that now was not the time to introduce such measures. If they were used prematurely, it would be likely to lead to the public being less receptive to messages at a time when the spread of the virus was more virulent.

92. On 11 March 2020, the WHO described Covid as a pandemic. Also on that date, the CCG met. I exhibit the minutes of the meeting as **MEWL/01-29 – INQ000215171** and the briefing note as **MEWL/01-30 - INQ000309787**. The papers confirmed that there

were now 15 cases in Wales, with evidence of some community transmission. Given the spread of the virus and the number of fatalities in Italy, there was a need to continue to prepare for the RWC scenario. Under this RWC, we were advised that at the peak of the epidemic, hospital admissions would be about three times higher than average, and demand for ventilation would be considerably higher than current full capacity in the NHS in Wales. Three delay options were being considered: self-isolation of individuals infected for seven days after symptoms developed; household quarantine for up to 14 days after the last person becomes symptomatic; and the cocooning of the elderly and vulnerable. Further thought needed to be given to this, as this could lead to further isolation and increased loneliness.

93. On 12 March 2020, the MHSS announced that Wales was moving from the “Contain” to “Delay” stage, reflecting the decision that had been taken at COBR.
94. By 13 March 2020, concerns had been raised about public events attended by large numbers of people, including sporting fixtures. On that day, I asked my Private Office to email Helen Lentle for advice as to whether the Senedd had legislative competence to limit mass gatherings. Legal Services provided advice that day which I exhibit as **MEWL/01-30a – INQ000000**. Any such legislation was likely to engage reserved matters. On the other hand, the draft Bill contained powers for the Welsh Ministers to regulate mass gatherings. Exercising powers under the Bill when it was enacted was preferable in the interests of being able to act coherently and comprehensively, as it would not raise questions of legislative competence.
95. On the evening of 13 March 2020, the First Minister’s office circulated to all Ministers and to myself, a number of documents to update us on coronavirus. I exhibit the email as **MEWL/01-31 - INQ000226939**. This included (a) a Welsh Government “read out” of the COBR meeting held on 12 March; (b) a Written Statement from the Minister for Health and Social Services made to the Senedd that day, confirming that Wales was moving from the Contain to the Delay phase, which I exhibit as **MEWL/01-32 – INQ000226942**, and (c) a joint letter from the Welsh Government and the Welsh Local Government Association, to all local authority leaders. I exhibit the letter as **MEWL/01-33 – INQ000226940**. We were also provided with an economic update, which I exhibit as **MEWL/01-34 - INQ000226941**.
96. A further Cabinet meeting was held on 16 March 2020. I exhibit the minutes of the meeting as **MEWL/01-35 - INQ000048797**. The first part of the meeting was concerned

with the budget, including considerations of what funding would be available to support the Covid response. In advance of this, initial work had been underway to consider how budgeted resources could be reprioritised to enable the Welsh Government to support individuals, organisations and businesses. The Minister for Finance and Trefnydd informed Cabinet that she had written to the Chief Secretary to the Treasury seeking urgent clarity on funding, to enable the Welsh Government to take decisions about the package of support we could put in place to support individuals and businesses. While waiting for a response, she emphasised that Ministers should not let uncertainty slow down decisions, and there might be a need to re-prioritise funding within existing plans to take all necessary steps to mitigate and respond to Covid-19.

97. The First Minister then provided an update on COBR discussions. We were informed that COBR had discussed further measures to help manage the outbreak, including seven day isolation periods and the management of mass gatherings. The UK Government were not prepared to advise against mass gatherings at this stage; this surprised me, given that such events brought large numbers of people into contact with each other. A discussion took place over “cocooning” older people. However, there was also a need to consider whether this would lead to further isolation and increased loneliness. There would also be an impact on multi-generational households. There was a discussion around the policy on testing, including the need to look at the routine testing of key workers. This was taken forward by the MHSS.

98. We agreed that daily press briefings would be held, led by Ministers at 9.30am. We also agreed the need for specific, clear Welsh communications (as most of the population followed UK led media outlets). We also suggested that television news channels should be encouraged to use British Sign Language. Ministers agreed that they would each need to identify a list of priority policy areas within their portfolios that would require urgent decisions. This did not apply to me in my role as Counsel General, as I did not have a policy portfolio.

99. On 17 March 2020, the Welsh Government published advice to the public to limit non-essential contact, to work from home where possible and to avoid social venues. Anyone with symptoms of Covid-19, however mild, was to stay home for 7 days (and all other household members for 14 days). That was announced in a statement by MHSS which I saw that day before it issued, and was I believe based on discussions at COBR the day before. I understand that the shielding plan was being developed at this time. However, this was led by the MHSS and his officials, and I do not recall being

asked to provide any advice on the plan at this time. Later that day, the MHSS made the Health Protection (Coronavirus) (Wales) Regulations 2020 (introducing powers for screening and isolation where there are reasonable grounds for believing individuals are infected and pose a threat to others, or have been in an “infected area” within 14 days of arriving in Wales and where there are reasonable grounds for believing they may pose a risk to others). I was sent a copy of the MA and the legal advice provided before the MHSS made these Regulations.

100. On the morning of 18 March 2020, the CCG met. I exhibit the minutes of the meeting as **MEWL/01-02 - INQ000215172**. We were also provided with various papers in advance of this meeting, including a detailed briefing prepared for the Health and Social Care Committee, which I exhibit as **MEWL/01-36 - INQ000349177**. A public health update was provided by the CMO(W) who informed the CCG that that it was likely that the virus was rapidly circulating in the community and the number of those infected was expected to double every three to five days. There were, at that stage, 136 confirmed cases in Wales with two fatalities. The CMO(W) noted that it was important to be clear on when the rate of infection would peak so that the appropriate NHS contingency could be put in place. He also indicated that there was some concern that not everyone was following the advice about social distancing. Modelling evidence was presented to the CCG by the Chief Scientific Adviser for Health which suggested that the UK was four weeks into the ‘curve’ with the peak of the virus anticipated to be some 11 weeks away. The NHS was four to five weeks away from maximum capacity.

101. The CCG was told that a policy decision on school closures was expected later that day. The CCG also considered a document which had been shared by the UK Government outlining the new structures to lead the UK Government’s key lines of operation. The CCG noted that it was still unclear how the Welsh Government would feature in those proposals and Ministers agreed that there was a need to ensure that Welsh Ministers were part of the decision making process. We were told that those concerns would be raised by officials with their Whitehall counterparts that afternoon.

102. Later on 18 March 2020, the Education Minister announced that the Easter holiday would be brought forward and that schools would be repurposed from 23 March 2020 to provide care for vulnerable children and children of key workers. I was not asked to advise on this decision, and nor were Legal Services.

103. There was a further COBR meeting on 20 March 2020, when it was agreed that there was a need to move urgently to enforce social distancing and to require certain businesses that were dependent on social mixing to close (e.g bars, restaurants etc). The First Minister and Minister for Health attended this meeting. I am aware that the decision to use public health legislation as the legal framework for these measures rather than the Civil Contingencies Act 2004 ("the CCA") was taken by the UK Government after discussion at this meeting. The First Minister also sought advice on the legal powers available to the Welsh Ministers to implement these restrictions. I exhibit the advice as **MEWL/01-36a – INQ000361418**.

104. The Welsh Government's Legal Services liaised closely with their counterparts in London to coordinate on drafting the necessary Regulations to implement this decision for their respective Governments. The final draft was completed shortly after midnight. The First Minister then made the Health Protection (Coronavirus, Business Closure)(Wales) Regulations 2020 at 1.45pm on Saturday 21 March 2020, and they came into force shortly thereafter. The Regulations closed restaurants, cafés, bars, pubs, cinemas etc.

105. On 22 March 2020 by MA/VG/1032/2020, exhibited as **MEWL/01-37 - INQ000136767**, I was asked to agree, together with the MHSS (as the relevant portfolio minister), a Legislative Consent Memorandum regarding provisions for Wales in the Bill. I considered this MA carefully, engaged with Legal Services in relation to it, and agreed the LCM. The Senedd then passed the Legislative Consent Motion on 24 March 2020. The Bill subsequently received Royal Assent as the Coronavirus Act 2020 on 25 March 2020 and most of its provisions came into force that day.

106. Concerns were raised during the weekend about large numbers of people travelling to tourist areas in Wales, placing local services under pressure. The First Minister and MHSS had a meeting with senior officials on Sunday 22 March, and action points were forwarded to all Ministers which I exhibit as **MEWL/01-38 - INQ000336319**. Proposals were put forward to close caravan parks and footpaths, and legal advice was provided on the same which is exhibited as **MEWL/01-39 - INQ000349202**. I discussed the legal advice being provided throughout the day with Helen Lentle. All Ministers were informed that work was going on to plan for lockdown. These matters were discussed further at Cabinet on the Monday morning (23 March 2020). I exhibit the Cabinet minutes as **MEWL/01-40 - INQ000048923**. The First Minister informed us that the UK Government had cancelled the COBR meeting scheduled for the previous day. It appeared that the

rate of transmission in London was increasing a lot faster than anticipated and the risk of the NHS becoming overwhelmed was very real. Further advice and guidance was expected after the COBR meeting later that day. We were informed that officials were working on plans for a lockdown in Wales to enable the Welsh Government to take a decision on a four nations basis with the other Governments, or to move separately. I think we all thought that lockdown was imminent and expected a decision to be made at COBR later that day. It was noted that a number of pubs and bars had not followed the advice from last Friday to close and so there was now a need to enforce closures (by designating local authorities to enforce them). Cabinet also decided to close non-residential caravan parks and tourist attractions in light of concerns about the movement of people, which threatened to overwhelm health services in those areas.

107. Cabinet decided that letters should be sent to around 150,000 vulnerable people in Wales to self-isolate. The letters were to contain medical advice and social support arrangements. Concerns about other vulnerable groups were highlighted, including disabled people and those suffering from domestic abuse, as well as whether DWP had capacity to deal with the large increase in benefit claims.

108. Cabinet had also been due to consider papers on the budgetary implications of Covid, as all Ministers had been asked to identify funds that could be redirected. However, there was no time for this consideration at the meeting. The First Minister established a small group to consider each paper and to maximise the available resources from existing budgets to be redirected to support the public sector and the needs of the economy. This group later came to be known informally as the Star Chamber (see above). I was appointed to this group, together with the Minister for Finance and Trefnydd. Damien O'Brien (the former Chief Executive of WEFO, and a non-executive director of the Welsh Government board) was also appointed). Cabinet discussed sectors that were likely to need additional support.

109. The First Minister attended COBR at 5pm on 23 March 2020. The Prime Minister informed COBR that he was about to announce a lockdown in England. The First Minister agreed to introduce a lockdown in Wales at the same time. The First Minister announced this at around 8.30pm that evening which I exhibit as **MEWL/01-41 - INQ000350712**. He announced that all remaining non-essential businesses would close, except for those selling food, pharmacies, banks and post offices. He said that everyone was being asked to stay at home, and to only go out once a day to shop for

basic food and to exercise close to home. He asked everyone to work from home if they were able to.

110. Meanwhile, work had been going on drafting Regulations to close leisure and footpaths. At 10pm on 23 March 2020, the First Minister made the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020, SI 2020/334. These Regulations came in to force the next day.

111. A further Cabinet meeting was held on 24 March 2020. We discussed the previous day's COBR meeting and the First Minister's announcement of the previous day. Cabinet was concerned about the impact on a number of vulnerable groups. First, children who were out of school. Further discussion took place on education related issues, particularly the approach to providing free school meals. Separate discussions were to take place urgently on food, to ensure supply chains, measures to protect staff and managing footfall. A discussion also took place around financial support, for the self-employed (a UK scheme was expected imminently), for creative industries, the tourism industry and the third sector. We were all concerned about those who were shielding. Guidance was being issued urgently to local authorities on how to support those who were shielding, including around food parcels, and access to prescriptions and medication. Support was also needed for young adults leaving care settings, and those suffering from domestic violence. Ministers and officials were to take these matters forward.

112. The Regulations imposing the first national lockdown were drafted urgently after the First Minister's announcement. The Welsh Government's drafting team worked closely with their counterparts in London. Draft Regulations were circulated by our First Legislative Counsel to certain Ministers and myself, as well as senior officials, by email late on the evening of 24 March 2020. I exhibit this email as **MEWL/01-42 - INQ000222509**. As Dylan Hughes noted, "the wide-ranging effect of the Regulations is extraordinary". I reviewed these carefully and was content with the proposed way forward in the truly exceptional circumstances that we faced.

113. A further public health update was provided to the CCG at its meeting on 25 March 2020. I exhibit the minutes of this meeting as **MEWL/01-43 - INQ000215173**. The CMO(W) confirmed that there had been 16 fatalities in Wales to date with more expected to be announced that day: the assessment now was that the rate of infection was around 10 to 12 days behind Italy. The Chief Executive of the NHS confirmed that

planning was underway to make available the maximum number of beds. Ministers confirmed that the four priority issues to address were the availability of personal protective equipment (PPE); the demand for additional testing; staffing levels in the NHS and increasing the number of ventilators. It was agreed at that meeting that Reg Kilpatrick would circulate a paper on the work being considered in relation to the consequences of a “full lockdown” in the United Kingdom.

114. The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, SI 2020/353 (“the Principal Regulations”), which implemented the national lockdown, were made at 2.45pm on 26 March 2020 (shortly after the United Kingdom Government made similar Regulations at 1pm on the same day). The Welsh Regulations came into force at 4pm that day. (This meant that all four nations were able to act within a similar timeframe). They replaced the two sets of Regulations I have outlined above.

115. The Regulations I have described above were all made under the Public Health (Control of Diseases) Act 1984, and not the Civil Contingencies Act 2004 (“the CCA”). My understanding is that the decision to use public health legislation as the legal framework instead of the CCA was taken by the UK Government at COBR on 20 March 2020. The decision whether to use the CCA or not was not a decision for the Welsh Ministers. The powers to make emergency legislation under Part 2 of the CCA have never been devolved, and so it was for the UK Government alone to decide whether to exercise those powers. The UK Government elected not to use them. As far as I am aware, the Welsh Government was never asked for our view on this legislative choice. I was certainly never consulted by the UK Government about it. I have no way of knowing whether, in making this choice, the UK Government took into account the possibility that this could give rise to a greater divergence of approaches across the UK. The UK Government should have been aware of this: powers under the public health legislation had been devolved for many years by this point.

116. But in any event, I did agree with this decision to use the public health legislation as the source of the power to make these Regulations. This was for two main reasons. First, powers under Part 2 of the CCA were intended to be used only as a last resort when no other powers were available. As alternative powers were available under public health legislation, the CCA powers could not be used. Secondly, the devolution aspect was important. The CCA provided for UK wide measures, exercised by UK Government Ministers. Yet the range of actions required to respond to the pandemic was intimately connected to devolved Ministerial competences (e.g. health, social care, education,

local government) and would affect bodies in areas where the operational relationships were with the Devolved Governments rather than with the UK Government (apart from in England, of course).

117. The initial Regulations were made under public health legislation before the Coronavirus Act became law on 25 March 2020. Essentially, the Coronavirus Act had extended provisions in the Public Health (Control of Diseases) Act 1984 to Scotland and Northern Ireland, so that they too could use public health powers to impose the restrictions that had been agreed on a four nations basis. I was satisfied that it was appropriate to make the Regulations under public health legislation: that legislation contained bespoke powers that had been designed to deal with SARS and a pandemic of this nature. The powers could be used responsively, alongside the important scrutiny and legislative arrangements which were in place in the Senedd.

118. The Principal Regulations were unprecedented: they introduced severe restrictions on almost every aspect of everyday life in Wales. I never envisaged that Regulations such as these would be made during my time as Counsel General. However, given the public health crisis that we were facing, and the advice we had received about the only measures available to restrict the transmission of coronavirus, I considered that they were necessary and proportionate. The Regulations also contained a requirement that the Welsh Ministers review the need for the restrictions and requirements every 21 days. I regarded this as a crucial element of the regulation-making process. They also expressly stated that as soon as the Welsh Ministers consider that a requirement or restriction imposed by the Regulations is no longer necessary to prevent, protect against, control or provide a public health response to coronavirus, the Welsh Ministers must publish a direction terminating the requirement or restriction. I describe the 21 day review process below.

119. The Principal Regulations contained provisions for enforcement and created criminal offences for those who contravened various requirements without a reasonable excuse. These were summary offences only, punishable by a fine. We also made provision for fixed penalty notices as an alternative to conviction, in the sum of £60 (reduced to £30 if paid within 14 days). For any repeat offenders, the fixed penalty increased to £120. I considered that these relatively modest sanctions were necessary. These provisions made it clear to the public that these were legal requirements, and not just guidance. I hoped that the existence of sanctions would operate as a deterrent to breaching the

restrictions. They were also important to ensure that enforcement authorities were able to take meaningful action if there was a breach.

120. The Principal Regulations were laid before the Senedd the day after they were made. Sections 45P to 45R of the Public Health (Control of Diseases) Act 1984 made detailed provision for scrutiny of Regulations by the Senedd. On this occasion, the Regulations were made under the emergency procedure in section 45R. In short, the Principal Regulations came into force before they were laid in the Senedd. They were however scrutinised by the Senedd in accordance with the requirements of section 45R. They were subject to a vote following a debate on the Regulations in the Senedd. An affirmative vote in the Senedd constituted approval. I understand that Helen Lentle has described the different procedures for making and scrutinising statutory instruments in her witness statement, and I do not repeat that here.

121. No impact assessments were produced at the time that the decisions I have outlined above were taken. In the ordinary course of events, Integrated Impact Assessments, including, where applicable, Equality Impact Assessments and Children's Rights Impact Assessments, would have been prepared and considered before these decisions were made. I pressed for this to happen at the earliest opportunity, but it is obvious that we were not operating in "ordinary" times at this point. The urgency with which these wholly unprecedented decisions had to be taken meant that there simply was not time to complete and consider detailed impact assessments. However, Cabinet members were aware throughout of the impact of these decisions on the vulnerable and disadvantaged, and this was a prominent feature of Ministerial discussions in Cabinet. For example, in lifting restrictions over the coming months, there were several instances where an easement was first introduced in relation to people who were terminally or seriously ill, or living alone, or had other characteristics which suggested vulnerability or disadvantage, before then being extended more widely. Potential impacts were considered at the time these decisions were made. They were further explored in the days, weeks, and months that followed, as I explain in the next section of this statement. Cabinet also considered a paper in early June on the approach to impact assessments and understanding the cumulative effects of Covid-19 and the response on vulnerable people and others.

122. I am aware that there is a debate about whether the first national lockdown was introduced early enough. I think given what we know now, it is reasonably clear that if we had entered into a lockdown perhaps a week earlier, then we would have been able

to limit transmission of the virus in the early stages more rapidly. I do think though, that from the perspective of a Devolved Government, this was not a realistic scenario other than in tandem with the UK Government. It would have been practically impossible to persuade the people of Wales to comply with these unprecedented restrictions if these steps had not also been taken across the rest of the UK. This was particularly so given that Covid-19 was much more prevalent in London and parts of England at the relevant time, than it was in Wales. The financial support mechanisms necessary to avoid catastrophic economic consequences of lockdown (such as the furlough scheme and support for the self-employed) were also dependent on actions taken by the UK Government. We made the best decision that we could at the time, based on what was known about the virus at the time and on advice in which we could have confidence.

Decision making after the first national lockdown

123. On 27 March 2020, the First Minister wrote to all Ministers, sharing the outcome of the Star Chamber decisions. We had been able to identify £257m in existing funding that could be repurposed to respond to Covid. Together with other funding streams, we had identified £1.1bn for immediate deployment in response to Covid-19. This Covid-19 response fund was made available to support key measures across departments. The Star Chamber was asked to continue in operation to consider any major Covid-19 spending proposals, which would need to be “cleared” by us. Initial financial commitments were made, including funding to support volunteers and the third sector, bus companies and business support.

124. On 29 March 2020, the First Minister made a declaration of threat of public health in Wales due to coronavirus, under Part 4 of Schedule 22 to the Coronavirus Act 2020. This enabled the Welsh Ministers to use the powers conferred on them by the Act, if those powers were needed.

125. Cabinet met again on 30 March 2020. I exhibit the minutes of the meeting as **MEWL/01-44 - INQ000048931**. An update was provided on the Star Chamber, as outlined above. We were told that letters to the “shielded” group of people would be delivered that week, with around 81,000 people having been identified. Further work on supply arrangements for shielded and vulnerable people was ongoing. The MHSS advised Cabinet that COBR had not met for 10 days but that there had been a constructive four nations Health Ministers meeting on the previous Friday. The General Public Sector Ministerial Implementation Group was also said to be working well.

126. The CCG met on 1 April 2020. I exhibit a copy of the minutes as **MEWL/01-45 - INQ000311845**. The CMO(W) informed the CCG that the number of people being infected and fatalities were continuing to rise as expected. Social distancing measures were, however, having an impact and the rate of infection was somewhere between 0.6 and 0.8. The CMO(W)'s view was that if the rate of infection remained around 0.6, then there would be a difficult period of two to three weeks with the rate of infection thereafter reducing. However, a rate around 0.8 would have a significant impact on the NHS. The CMO(W) also noted that it was important to begin planning for an exit strategy to help manage the recovery phase. The CCG were also updated as to preparations being made for increased hospital admissions with rugby stadia and other leisure facilities being utilised. Those beds would be used as a step-down facility and possibly triage centres. It was reported to the CCG that the military was providing invaluable support. Support for social care was discussed, and an update provided by the Leader of the WLGA, Councillor Andrew Morgan.

127. In the week or so after the first lockdown was implemented, there were concerns that some employers, particularly some in the construction industry, were not complying with safe social distancing requirements. We did not want to shut down further sectors of the economy, but our overriding priority was the safety of the public and the workforce (those who were attending work, because their work could not be done from home). We therefore considered making Regulations short of a complete shutdown, for all workplaces. On 2 April 2020 I met twice with the First Minister, together with the Minister for Housing and Local Government, the Minister for Economy and Transport and the Deputy Minister for the Economy and Transport, and officials to consider these issues. We concluded that there was an urgent need to act to make clear that the requirement to keep a distance of 2 metres from other people should apply in the workplace, and that all employers should be subject to a duty to take all reasonable measures to ensure that social distancing was put in place. While we recognised that this would have a significant impact on some businesses, these Regulations were considered necessary to stem the transmission of coronavirus, and this imperative outweighed other considerations. The First Minister made these Regulations – which amended the Principal Regulations – on 3 April 2020. They came into force on 7 April 2020. Draft guidance had been prepared to apply across a wide range of workplaces. This draft was approved by Cabinet on 6 April 2020.

128. Extensive work was now going on across the Welsh Government to prepare guidance documents to provide practical advice on the operation of the Regulations across different sectors. Helen Lentle, Dylan Hughes and I were all agreed that these guidance documents had to be reviewed and “cleared” by Legal Services, to ensure as far as possible that the guidance was consistent with the legislation. That message was conveyed to all policy officials working across the Welsh Government.

129. Cabinet met on 6 April 2020. I exhibit the minutes of the meeting as **MEWL/01-46 - INQ000048791**. The First Minister provided an update on Cabinet arrangements confirming that formal Cabinet meetings would continue on a Monday and would be the forum for substantive government decisions. The CCG would continue to meet on Wednesday mornings. Given the speed of developments, the First Minister also introduced a daily Ministerial call at 9am.

130. I had been asked by the First Minister to take forward a number of pieces of work, and this was conveyed to Cabinet. The first was to provide the overarching Ministerial lead on the delivery of cross-cutting work-streams. This entailed tracking across Government progress on the range of workstreams within or between portfolios which had a cross-government relevance and convening meetings between relevant Ministers and their officials if matters touching on more than one portfolio needed to be resolved or expedited. Two of the cross-cutting work streams for example, were to ensure that the needs of vulnerable people were being met and to mitigate the difficulties of digital exclusion. This work involved liaising with Ministers and officials to assist in identifying vulnerable people in the context of their portfolios and to ensure that their needs were met. Cabinet agreed the use of a Covid-19 Policy Coordination Dashboard (“the Coordination Dashboard”), to illustrate the co-ordination of the Welsh Government’s response to the pandemic, setting out the different workstreams clearly. The Coordination Dashboard sat alongside a new Data Monitor to provide critical timely information across Wales: such as the number of cases, key statistics from Local Health Boards across Wales, economic indicators, social distancing data, and a range of data measures showing the impact of our interventions (such as children attending schools, calls to helplines, delivery of food parcels etc). I was asked to present the Coordination Dashboard regularly, so that Ministerial colleagues were sighted on progress across Government and could identify any challenges in delivery. The steps being taken across Government to support vulnerable people are set out in the Coordination Dashboard and updates were provided at each cabinet meeting. I attach an example of the

dashboard as **MEWL/01-47 - INQ000048968** and an example of a Data Monitor as **MEWL/01-48 - INQ000048827**.

131. The second was to co-ordinate the formal review of the Principal Regulations. At this initial stage, I asked Ministers to submit any proposals to me by 10 April. It was noted that the Welsh Government would undertake informal consultation with all social partners, including trade unions and employers in the course of the ongoing review. The First Minister also reported that he had written to the Prime Minister, jointly with the First Minister of Scotland and First Minister/deputy First Minister of Northern Ireland, calling for an urgent meeting of COBR with a view to stepping up inter-governmental preparations for the 16 April review.

132. The third was to coordinate wider work on preparation for future recovery after Covid-19, in line with principles that were then agreed by Cabinet on 20 April. In order to do this, I established a group of external experts, and with input from Ministerial colleagues, drew up a list of expert participants across a range of disciplines who could help inform and test our long-term response to Covid-19. I chaired this Continuity and Recovery Expert Group, which met in roundtable format over a number of days during May 2020 and I also chaired the internal Portfolio Board for Continuity and Recovery, which comprised senior officials from within the Welsh Government. I return to this work further below.

133. The CCG met on 8 April 2020. I exhibit the minutes of that meeting as **MEWL/01-49 - INQ000311826**. The CMO(W) reported that the number of people being infected, along with ICU admissions and fatalities were continuing to rise as expected. Around 50% of critical care beds in Wales were occupied; some 35% were cases of confirmed or suspected covid. Infection rates in Wales were at their highest in Aneurin Bevan University Health Board. The social distancing measures were continuing to have a significant impact in Wales and the rate of infection directly generated by one case appeared to be somewhere between 0.6 and 0.9. The CMO(W) noted that his team were considering the sequencing of lifting restrictions, when the time was right, and would consider the experiences of other nations, such as South Korea. The group was told that a vaccine would not be available until the end of the year, at the earliest.

134. On 10 April I convened a call at which Ministers were to outline who they considered as “vulnerable individuals” in their portfolio, so that a coordinated approach could be taken to meet their needs. I exhibit minutes of the meeting as **MEWL/01-49a –**

INQ000376473. I held further meetings on 14 April, relating to economically vulnerable groups and to vulnerable children. I exhibit minutes of these meeting as **MEWL/01-49b -INQ000376604** and **MEWL/01-49c-INQ000376605**. Following these discussions, we concluded that individuals who were not in the cohort who had received “shielding” letters from CMO(W) but who were nevertheless isolated in the context of the pandemic, might be particularly vulnerable. There was potential, if we did not act appropriately, for this group to miss out on support available for the clinically vulnerable. Work was taking place across Government to ensure that the needs of this cohort were met (as summarised in the Coordination Dashboard regularly submitted to Cabinet).

135. Throughout April and into May, I continued to co-ordinate work across Government in this area, seeking input from Ministers and officials across portfolios. Local authorities were key actors in relation to this vulnerable cohort of individuals, and a Ministerial Discussion Paper on the support available from local authorities was produced and discussed. I exhibit the paper as **MEWL/01-50 - INQ000281678**. I convened a further meeting on this subject on 5 May; it appeared that local authority provision was generally working well, though there were concerns that there might be suppressed demand in that individuals might not be coming forward for support. A further paper, outlining ways in which the Welsh Government could further support this group, was commissioned after this meeting which I exhibit as **MEWL/01-51 - INQ000349502**.

Reviewing the Principal Regulations

136. From the outset, I was keen to put in place a formal process to govern the 21 day reviews required by the Principal Regulations, which could support a regular, familiar rhythm of engagement and decision making. The gravity, both of the harms which the Regulations sought to avert or mitigate, and the stringent nature of the restrictions imposed on the public and the separate harms that the restrictions were capable of causing, meant that the review process was of vital importance. Helen Lentle provided detailed advice on what was required on 11 April 2020 exhibited as **MEWL/01-52 - INQ000349314** and this fed into the development of the Welsh Government’s Recovery and Exit Strategy. The First Minister and I discussed a way forward with senior officials on 14 April 2020, and subsequently approved a paper prepared by the Covid-19 policy team on the approach to reviewing the Principal Regulations which I exhibit as **MEWL/01-53 - INQ000349337** The paper identified three distinct elements of work:

- 1) First, the “nuts and bolts” of existing or proposed new Regulations, i.e. *how* any restrictions should be imposed, ensuring they work and making sure they are explained effectively through guidance and other communications. This cross Government work was led by the Covid-19 team, and LS and OLC colleagues would be heavily involved.
- 2) Second, the cyclical review, which was required to take place at 21 day intervals. Consideration of whether the social distancing and isolation measures could and should be lifted would be drawn from across the Welsh Government, Public Health Wales and through close engagement with the UK Government, if that could be secured. Policy officials would provide Ministers with advice on the options for moving out of the current state and into recovery.
- 3) Third, the longer term work on Continuity and Recovery. There was a need for early identification of issues arising due during the recovery stage. The intention was to enable Ministers to contextualise decisions on a sound evidential basis. Tim Render and Peter McDonald were the lead officials, and the First Minister asked me to have oversight of the wider work on continuity and recovery.

137. In practice, there would inevitably be overlap between these three elements of work. Ex-Covid (which is described in M2B-WG-SM-01 and was established to oversee and coordinate actions relating to Covid-19) would coordinate these three elements.

138. The first formal review of Regulations took place on 16 April 2020. A detailed MA was submitted to the First Minister for decision and copied to all other Ministers exhibited as **MEWL/01-54 - INQ000145553**. The MA was accompanied by evidence from the CMO, up to date modelling from SAGE, evidence about compliance with the restrictions and a detailed review of each of the restrictions. There had not been time to prepare an equality impact assessment for this review, but we were all aware of the impact of the restrictions on different protected groups. The Coordination Dashboard presented each week to Cabinet contained a summary of the work being carried out in this area. The recommended amendments were designed to address particular issues that impacted on protected groups: e.g. to permit those with a medical need to leave home more than once a day to take additional periods of exercise, and to allow money transmission services to remain open (to allow those with families abroad to send money).

139. A draft of our proposals was shared with the UK Government, the Devolved Governments and the Mayor of London in advance of discussion at COBR on 16 April 2020. I understand that at COBR there was agreement that restrictions needed to remain in place for at least 3 or 4 more weeks, and that this time would be used to develop a UK recovery plan which would commence when the restrictions could be eased. It was envisaged that there would continue to be a four nations approach to social distancing measures at least until the SAGE review was completed at the end of that month.

140. The First Minister then decided to adopt the recommendations from the review. In substance, the restrictions were retained, subject to some minor amendments to explicitly allow for the reasonable excuse of taking exercise no more than once per day, to include additional periods of exercise where there is a medical need (e.g. those with autism or learning difficulties), to allow money transmission services to remain open, and restrictions on visitors to care homes. We also identified considerations for the next review: to consider giving police officers powers to direct people to return to their normal place of residence (to deal with those travelling to second homes), to set a limit on the distance people are allowed to travel for exercise, and whether private worship could be permitted, subject to social distancing rules.

141. The First Minister made a Written Statement to the Senedd on 16 April 2020, confirming that the review had been carried out. I exhibit the statement as **MEWL/01-55 - INQ000023238**. The draft Regulations were discussed in a Ministerial call on 24 April 2020. The amendments were made by the First Minister on 24 April 2020 (see SI 2020/452 – the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020).

142. Cabinet met again on 20 April 2020. I exhibit the minutes as **MEWL/01-56 - INQ000048804**. The First Minister reminded Cabinet of the importance of ensuring that actions and decisions were recorded and disseminated, particularly through private offices. That would ensure that actions were assigned to a lead official, followed up expeditiously, and there was an appropriate audit trail to explain why the Government had taken the decisions it had. I presented a paper to Cabinet on the Coordination Dashboard, and the Data Monitor, produced by the Welsh Government's Knowledge and Analytical Services ("KAS"). This was a single source of critical data in relation to the Welsh Government's response to Covid-19 and was shared on a weekly basis with

Cabinet members. Ministers noted the Data Monitor should include details of the number of people reporting hate crime and those contacting the Live Fear Free helpline in future, and we agreed that officials should include this data was included in future Data Monitor reports. Cabinet welcomed the update and agreed that there would be a need for further discussion on the cross-over areas, such as how to support those that had been classed as vulnerable but not shielded and digital inclusion. In terms of digital, it would be important to consider future design, not just exclusion. These matters were being progressed on a cross-Government basis as a matter of urgency.

143. Cabinet considered a paper on the *Response to Covid-19: preparation for future recovery*, which drew upon the work I had been asked to do. Cabinet agreed three key principles to guide our approach in preparing to meet the challenges of recovery after Covid:-

“First, considerations of social justice, fair work and environmental sustainability must inform the Welsh Government’s approach to recovery and it must be compliant with the requirements of the Well-being of Future Generations (Wales) Act 2015.

Second, the Government’s recovery programme must have particular regard for those who are economically or otherwise disadvantaged, especially by age, gender, disability or other protected characteristic. It should also seek to identify the sources of economic prosperity in the economy after Covid-19, encourage them and the equitable participation in them by people in Wales.

Third, regard should also be had for the current programme of Government and for existing delivery structures and stakeholder relationships although these should be challenged where there is strong evidence that their underlying assumptions may have been fundamentally changed as a result of the Covid-19 crisis....”

144. Cabinet agreed to establish the Continuity and Recovery Expert Group to contribute external perspectives and constructive challenge to the task of planning for the recovery, and the internal Portfolio Board for Continuity and Recovery. As I have explained above, I was asked to coordinate this work and to Chair both groups. In due course, following the roundtable discussions with the Continuity and Recovery Expert Group, with the First Minister’s agreement, I established a core Expert Advisory Panel, drawing from some of the participants in the Continuity and Recovery Expert Group roundtables. I return to this below.

145. The next CCG meeting took place on 22 April 2020. I exhibit the minutes as **MEWL/01-57 - INQ000311833**. The CMO(W)’s update was that the rate of transmission amongst the general public had appeared to have stabilised; the number of those admitted to hospitals had reduced, but there were regional variations. Community transmission

was low, which, the CMO(W) said, demonstrated that the restrictions were working. To prepare for the gradual removal of the lockdown, there would need to be effective surveillance, use of technology to identify and trace new cases of the virus and consideration as to how other nations had managed the lifting of restrictions. A small group had been established within the CMO(W)'s team to consider what could be learned from other countries. The Chief Constable of Gwent Police had been invited to attend and provided an update. She confirmed that the Welsh Police Forces were continuing to enforce the Coronavirus Restriction Regulations across Wales, and generally people were complying. The Chief Constable informed the group that the Strategic Co-ordinating Groups, which were chaired by senior police officers, would be involved in discussions about lifting the 'lockdown'.

146. On 24 April 2020, the First Minister published *Leading Wales out of the Coronavirus pandemic: a Framework for Recovery* ("the Framework") exhibited as **MEWL/01-58 - INQ000349349**. The Framework set out the evidence, principles and public health measures that the Welsh Government would apply when considering whether/how to ease the restrictions. First, it set out the measures and evidence by which we judged the current infection level and transmission rates in Wales. Second, it set out the series of principles that we used to examine proposed measures to ease the current restrictions, grounded both in scientific evidence and wider social and economic impacts. Third, it set out how we would enhance our public health surveillance and response system to enable us to closely track the virus as restrictions are eased. I understand that the MHSS has provided details of this system in his witness statement. The Framework set out the four Covid-19 related harms: (1) first, through direct harm to individuals from Covid-19 infection; (2) second, the harm caused if services in the NHS become overwhelmed due to demand from patients with Covid; (3) third, harms from non-Covid illness, e.g. if individuals do not seek medical attention for their illness early and their conditions worsen; and (4) fourth, socio-economic and other societal harms, such as the economic impact on certain socioeconomic groups of not being able to work, impacts on businesses of being closed or facing falling customer demand, and psychological harms to the public of social distancing and many others.

147. The Framework confirmed that our public health response would draw on the international evidence, which the CMO(W) would monitor. The Framework also confirmed that our preference as a Government was that all four nations retain a common approach to lifting the restrictions. This proved to be challenging in light of the UK Government frequently acting without prior warning, and its reluctance to share

information at times. However, we had consistently made clear that we would take the right decisions in the interests of the people of Wales.

148. Cabinet met on 27 April 2020; the minutes are exhibited as **MEWL/01-59 – INQ000129868**. We were provided with an update by the CMO(W) who said that he had asked Public Health Wales (PHW) to prepare an approach for the lifting of restrictions when the timing was appropriate. PHW had been asked to consider three issues: how to have effective surveillance during the easement process; a procedure for identifying and tracing cases once the restrictions had been lifted; and the experience of other countries in reducing restrictions. Cabinet further discussed the use of face coverings and Ministers noted that although the CMO(W) had not prepared any advice for the Government, his initial view was that use by the general public was of marginal value. There was concern that people with mild symptoms might avoid self-isolating by using coverings, and that an increase in demand for coverings from the public might lead to a diversion of supplies from the Health and Social Care sectors. It was noted that SAGE was continuing to consider the science on the use of face coverings with advice to be presented to Governments in due course.

149. There was a CCG meeting on 29 April 2020. I exhibit the minutes as **MEWL/01-60 - INQ000311831**. I chaired the Portfolio Board for Continuity and Recovery on 30 April 2020. During discussions I noted the emergence of potentially different approaches between Wales and England and the challenge of managing any divergence because of different conditions in both nations. The impact of any differential approach to easements on cross border services would require careful consideration.

150. There were three roundtable discussions in early May 2020 of the Continuity and Recovery Expert Group. These sessions were supported by Cardiff University's Wales Centre for Public Policy, who provided briefing reports to help structure and inform the discussion. The effects on vulnerable cohorts, on public services, on the economy and the environment were key themes.

151. We later convened three further roundtables (see below) and I commissioned a report from the Wales Centre for Public Policy in early June, exhibited as **MEWL/01-61 - INQ000129878**, which drew together the conclusions from these six meetings, which could then be used to inform policy thinking across the Government. I also believed it was important for these insights to be shared publicly and in early July, WCPP published

- a report of the roundtable discussions, structured to reflect their three key themes, and listing all the expert participants. I exhibit this report as **MEWL/01-62 - INQ000282315**.
152. I would later establish a standing Expert Advisory Panel which would have four standing members: Torsten Bell (from the Resolution Foundation), Rebecca Heaton (who had represented Wales on the UK Committee on Climate Change), Paul Johnson (Institute for Fiscal Studies) and Miatta Fahnbulleh (New Economics Foundation). A further fifth member with expertise in the particular subject under discussion from time to time would be invited to attend.
153. Cabinet met on 4 May 2020, and considered the latest version of the Coordination Dashboard, exhibited as **MEWL/01-63 - INQ000048975** and the Data Monitor exhibited as **MEWL/01-64 - INQ000048973**. The Minister for Finance and Trefnydd then introduced a paper looking at the financial aspects of the response to Covid-19. I exhibit the minutes of the meeting as **MEWL/01-65 - INQ000048790**.
154. On 5 May I convened a meeting of Ministers and officials to consider further the support available for the non-shielding vulnerable cohort; it appeared that local authorities and voluntary groups were providing assistance, but that the situation required further monitoring and a further paper was produced later in the month, noting the need for digital inclusion.
155. The next review of the Regulations was due to take place by 7 May 2020. In advance of this, I asked the Director of Legal Services and First Legislative Counsel to prepare a paper on the "Decision Making Process" for easing Coronavirus restrictions exhibited as **MEWL/01-66 - INQ000349494**. I discussed this with them before it was produced and agreed with the approach set out in this paper. This paper then formed the basis for the next review of the Regulations, alongside the Framework "*Leading Wales out of the coronavirus pandemic*." From this point forward, the reviews were conducted at Cabinet. Papers for Cabinet would be prepared using the Decision-Making Process and the Framework. The papers included: (1) advice from the CMO; (2) advice from TAC/TAG and any update on SAGE modelling; (3) evidence on compliance with existing restrictions; (4) information about the approach being taken across the 4 nations (where that was available); and (5) policy advice on the review findings. Cabinet would be provided with a draft of the MA for the First Minister, which included detailed legal advice and the financial implications of the recommendation. A stand-alone legal advice note would also be produced. I exhibit the legal advice note produced for this review as **MEWL/01-67 - INQ000227609**. At Cabinet, decisions would be taken on the way

forward. After Cabinet discussions, the draft MA would be finalised and submitted to the First Minister to take the formal decision. The final version would also be copied to all Ministers (and myself). Proposals for each review were generally discussed with social partners in advance of consideration at Cabinet.

156. Cabinet met again on 7 May 2020 to carry out the 21-day review of the Regulations. I exhibit the minutes of this meeting as **MEWL/01-68 - INQ000048792**. Anxious and detailed consideration was given; the first part of the meeting (in the morning) lasted for over two hours, and Cabinet reconvened in the evening. The CMO(W) and Chief Scientific Advisor for Health (CSAH) both attended the meeting, as well as the Co-Chair of the TAC. The advice followed the approach set out above:

- The restrictions must be for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination.
- There must be a threat to public health.
- The restriction has to be a proportionate thing to do considering what the restriction is intended to achieve.

157. The MA exhibited as **MEWL/01-69 - INQ000227608** considered the proportionality of the restrictions, with the point being made explicitly that the response needed to be tested for different interventions and combinations of interventions. It was noted that the interactions and interdependencies between interventions made it impossible to assess individual restrictions in isolation. The internal review had identified three priority areas for early consideration as part of lifting the lockdown restrictions: the opening up of public spaces; increasing economic activity; and increasing essential health care services.

158. The First Minister highlighted the importance of considering the recommendations in the paper through the lens of the impact on public health and invited the CMO(W) and the CSAH to provide their professional advice. The current evidence on the effect of ongoing restrictions and requirements was that the key indicators, which related to direct harm from the virus were either stable or stabilising. Too early or extensive easing of restrictions could lead to a return of exponential growth of viral transmission, and there would be a need to closely monitor the experiences of other nations. We had to balance these harms against the indirect harms that arose from

lockdown measures, and the potential for disproportionate harms to both socio-economically disadvantaged and younger people. We were informed that there had been a reduction in compliance with the restrictions with some behavioural psychologists suggesting that offering easement of certain restrictions may lead to improved compliance with others. However, any changes to the restrictions should be complemented by continued strong messaging around personal hygiene, social distancing and expected behaviour.

159. Cabinet was told that CMO(W) did not recommend the use of face coverings and it would be a policy choice. The CSAH informed Cabinet that the average rate of transmission (R) was below one and when the rates with the health and care settings were taken into account the 'R' rate was considerably lower in communities. The proposed changes were unlikely to lead to significant increase in the R number should people continue to comply with the social distancing rules.

160. I outlined the legal tests that Cabinet was being asked to consider. In line with Cabinet priorities, and with consideration of the assessment from SAGE on where activity could resume without materially affecting the rates of transmission and public health objectives, along with the wider consideration of economic, social and wellbeing objectives, four proposals were recommended:

- 1) To improve the health and wellbeing of individuals, greater use of outside spaces for the purposes of exercise, health and wellbeing should be allowed.
- 2) There should be increased economic activity in areas already allowed to open, but not choosing to do so, and some closed outdoor economic activity should resume, such as outdoor markets and garden centres.
- 3) Some limited public services, starting with libraries and household waste and recycling centres, should be allowed.
- 4) There should be a continued and gradual increase of essential non-Covid activity in the healthcare system.

161. As the legal advice exhibited as **MEWL/01-70 - INQ000227609** notes, no formal equality impact assessment was produced for this review. The overriding consideration was whether or not a restriction could be relaxed without undermining public health through increased transmission of coronavirus. I agreed with the advice that as more nuanced decisions to ease restrictions were being considered, the need for careful consideration of the equalities implications of proposals became more significant. This was an issue I subsequently raised with Cabinet and officials. However, even at this

early stage of easing restrictions, my view is that both Cabinet and officials had the impact of NPIs on at risk and vulnerable groups, and those with protected characteristics, firmly in mind. The Coordination Dashboard I have mentioned above summarised all the cross government work to protect at risk and vulnerable groups, and highlighted particular impacts on those with protected characteristics. Work emerging from the First Minister's BAME advisory subgroups (led by Professor Emmanuel Ogbonna and Judge Ray Singh respectively) suggested that the virus itself had a disproportionate impact on many ethnic minority groups, and the impact on those with disabilities was also becoming clear.

162. It was agreed that schools should not reopen on 1 June, but that education and childcare settings, public transport and businesses not currently allowed to open would be a priority for the next review. The Minister for Education had given a commitment to provide three weeks' notice of any change in policy on schools, and so the Minister was to make an announcement later that day. We all agreed that it was important to make clear that schools remained open for those with additional learning needs and the children of key workers.

163. We discussed whether places of worship could reopen. While it might have been possible to permit some re-opening, the feedback that had been received from religious leaders in the Faith Forum was that, on the whole, they were not seeking partial re-opening and would prefer to re-open in full when the time was right.

164. We spent some time discussing whether any additional activity in outdoor settings should be permitted. This would have health and wellbeing benefits and could reduce indirect harm associated with lockdown. However, there was a concern that if there was any relaxation in the Regulations the rate of infection could increase, and any material rise in the reproduction rate above one could have a significant impact on the population and the NHS's ability to manage cases. Ministers asked for further advice on whether a safe distance could be identified for people to travel from their home to participate in leisure activities. A request was also made for the latest data on the rate of infection in Wales. Cabinet adjourned while this information was obtained.

165. Cabinet reconvened at 6pm. New data from SAGE confirmed that the rate of infection in Wales had dropped to between 0.6 and 0.6 and 0.75 in the community, which gave sufficient headroom for Cabinet to agree the modest package of adjustments. It was also noted that evidence suggested that Covid did not survive well in direct sunlight,

suggesting that outdoors was safer. Cabinet also considered advice received from SAGE which indicated that there was a likelihood of civil disorder if adjustments to the current Regulations were not made. All four harms set out in the Framework were also considered. While we had to bear down on the spread of the virus, we had to strike the difficult balance of keeping the rate of infection below 1, while also addressing other harms. We also received advice from the Health and Safety Executive on the use of face coverings in public. We were advised that HSE considered the use of PPE in public the least effective barrier, compared with other measures, such as social distancing, and thorough cleaning and hand washing protocols, which had far higher success in eliminating the virus.

166. All of the recommendations were then adopted. It was agreed that the Regulations would be amended to remove the requirement that exercise should only take place 'once a day'. The aim was that any exercise should take place "locally". The term 'leisure' would not be explicitly used in the Regulations but a suitable definition would be considered further in the guidance, limited to being incidental to taking exercise. It was agreed that it would not be practicable to set a maximum travelling distance from home within the Regulations but that guidance would be provided instead.

167. It was decided that key indicators would be monitored daily so that Ministers could intervene if necessary. We identified a number of criteria that, if met, would lead to us re-imposing the original Regulations. These were if R was greater than or equal to 1.1, if the doubling rate for new hospital admissions is shorter than 30 days, if the total critical care bed occupancy was over 180 and Covid numbers were increasing for 7 days, and if critical care occupancy for Covid patients was over 120 and increasing for 7 consecutive days.

168. It was noted the sharing of information by SAGE had improved after the First Minister had raised the issue with the Chancellor of the Duchy of Lancaster. Ministers asked that a summary of the SAGE advice be circulated to Ministers on a regular basis.

169. We were all agreed that the messaging around decisions from the Welsh Government needed to be clear. We agreed that messaging around restrictions would be amended to include 'Stay safe, Stay local' when further restrictions were lifted, alongside the current 'Stay home' headline in Wales. The First Minister made this announcement in a Written Statement to the Senedd on 8 May 2020. The Principal Regulations were amended on 11 May 2020 to reflect these decisions.

170. The First Minister informed Cabinet of his telephone conversation with the Prime Minister and other Devolved Governments about the roadmap the UK Government would be announcing on Sunday evening. It was reiterated that a four-nation approach was the preferred way forward, but only when all Governments were fully sighted on the plans and the evidence that supported the course of action. The UK Government had not shared this information with us at this time. This would recur.

171. On 10 May there was a detailed discussion during the Ministerial call, in respect of the Regulations, in particular in the light of the First Minister's attendance at COBR earlier in the day. I exhibit the note of this call as **MEWL/01-71 - INQ000320849**. The First Minister informed us that the UK Government would be making modest changes to their Regulations at this time, but there was an important change in their messaging, away from "Stay Home" to "Stay Alert". We were concerned that this would present problems in terms of cross-border travel, and mixed messages within Wales. We also discussed the UK Government's differing roadmap. As part of the discussion, I noted the importance of signalling that any roadmap must be contingent on the progress of the disease, and that it followed that the actions and timescales across the four nations would not necessarily be the same - they would need to be tailored to the particular situation in each country. It was decided that Wales would stick with our "Stay Home" messaging. I understand that there were discussions with UK Government at official level where there was agreement that the Stay Alert message would not be broadcast in Wales. Unfortunately, the UK Government did broadcast their messaging on some UK media in Wales. On 10 May 2020, I recall doing a television interview with Wales Today where I emphasised that the changes announced by the Prime Minister applied only in England and did not apply in Wales. It seemed to me absolutely vital to communicate this clearly and prominently in light of the implications. As I have explained above, I wrote to the Attorney General about this issue on 13 May 2020.

172. I continued to present the Coordination Dashboard and Data Monitor at each Cabinet meeting. On 11 May 2020, I also presented a paper on "*Response to Covid-19: Preparation for Future Recovery*" exhibited as **MEWL/01-72 - INQ000048983** which provided feedback from the initial three roundtable discussions and outlined the next steps to hold a series of further roundtables with participants from Wales, and then to establish a standing Expert Advisory Panel drawn from some of the participants in the six roundtable sessions. I exhibit the minute of the Cabinet meeting as **MEWL/01-73 - INQ000048795**.

173. On 12 May 2020, the CMO (W) made a public statement that he was not recommending the compulsory wearing of face coverings by everyone when they leave home. This was said to be a matter of personal choice. I exhibit the statement as **MEWL/01-74 - INQ000048738**.

174. There was a CCG meeting on 13 May 2020. The papers recorded that the spread of infection remained stable with a little improvement. I understand that the CMO(W) expressed the view that the recent changes to the restrictions in Wales were proportionate, as evidence from other parts of the world, such as Korea, Germany and Singapore, demonstrated that relaxing measures too soon and too quickly had led to increases in the number of reported cases of the virus.

175. The Portfolio Board for Continuity and Recovery met on 15 May 2020, and I exhibit the minutes of this meeting as **MEWL/01-75 - INQ000350592**.

176. On 15 May 2020 the First Minister sought views on the daily (weekday) pattern of Ministerial calls. The response was that Ministers felt that the calls were very valuable as a means of updating and keeping colleagues feeling connected with each other. However, it was agreed that the Monday Ministerial call was no longer required, as it effectively meant that Cabinet would meet twice on the same day. There was continuous discussion in respect of the pandemic and its impact generally, with specific ad hoc meetings of Ministers and officials (with relevant experts such as the CMO(W) attending as required) to consider particular problems. The daily Ministerial calls ensured that everybody was aware of the broader context and, in my view, at this stage, played an important role in co-ordinating the response.

177. The process and governance arrangements for the 21-day reviews was now well-established. Further refinements were made on 22 May 2020, after I considered an update to the "Decision Making Process" document I have described in paragraph 155 above, that had been prepared by Dylan Hughes and Helen Lentle which I exhibit as **MEWL/01-76 - INQ000227963**. The paper emphasised the need for the review process to be driven by public health requirements, for any restrictions to be necessary and proportionate to achieve those requirements, and for the scheme as a whole to be rational. Dylan expressed some concerns that the decision-making process to date had not fully reflected these requirements. I discussed the paper with Dylan and Helen at a meeting and concluded that we would need to address these concerns immediately.

To the best of my knowledge, this was a discussion conducted at pace and for this reason it was not minuted. I and the team assisting me with documents for this statement have carried out searches for any notes or related documents, and I confirm that none have been located. The same day, a paper, exhibited as **MEWL/01-77 - INQ000349472** was produced for the Portfolio Board for Continuity and Recovery on Impact Assessments and the important role they played in the review process, particularly now that more nuanced decisions were being made to ease restrictions. Accordingly, on the evening of 22 May 2020, I asked my private office to send a note to all those working on the 21-day reviews, reminding officials that I expected to see (1) the legal decision making framework followed in advice to Ministers about the review of the regulations; and (2) an assessment of the equalities impact of various recommended options included in the advice. I exhibit this note as **MEWL/01-78 - INQ000349507** (Cabinet subsequently consider a paper on the approach to impact assessments and understanding the cumulative effects of Covid-19 and the response on various cohorts of people).

178. These matters were addressed at the next 21 day review. As I explain further below, at the next review, on 27 May 2020, papers put before Cabinet were prepared in accordance with the revised decision making process, and expressly considered the impact of decisions on groups with protected characteristics (even though a full IIA was not completed). From this point forwards, formal impact assessments were usually completed whenever anything more than minor changes were being proposed. I exhibit some examples here:

- (1) Assessment re businesses – equality (1) considered from page 12 exhibited as **MEWL/01-79 - INQ000048834**
- (2) Assessment re schools/childcare: equality impacts considered from page 16 – exhibited as **MEWL/01-80 - INQ000048833**
- (3) Assessment re seeing family and friends: from page 12 – exhibited as **MEWL/01-81 - INQ000048832**

179. Where decisions were to be implemented by particular Ministers, then in practice, more detailed impact assessments were carried out at that point.

180. My work on the early reviews of the Principal Regulations focussed on the structure of decision-making and the legal considerations which were required. That, of course, only gives a partial picture: every review was informed by detailed scientific and health advice from CMO(W), TAC/TAG and other technical advisors. As time progressed, and

Ministers and officials became more familiar with the process and the relevant issues, my personal involvement in the *process* of review diminished, although of course my Cabinet role meant that I took a full part in collective decision-making on each occasion changes were considered.

181. The Regulations were supplemented by Guidance, which was intended to reflect the content of the Regulations and public health best practice but did not itself have the force of law. Guidance might be aimed at particular groups of people or businesses and would be produced by policy officials. In order to ensure consistency across Government, we adopted a policy on Welsh Government Covid-19 Guidance exhibited as **MEWL/01-82 - INQ000349531**. All guidance was to be checked by the relevant Legal Services subject team to ensure it was fully consistent with the legal position. All new Guidance, and substantive changes to pre-existing Guidance, had to be cleared with the relevant Minister and by me as the Counsel General (see paragraph 2.6) So far as I can recall, this was the process that was followed, and I was quite heavily involved at various times in considering, amending and approving draft Guidance.

182. This internal policy note also underlined the importance of using accessible language in publications that were intended for the general public.

183. I was also keen to ensure that the legislation was as accessible as possible to the general public. The authoritative version of each set of Regulations and amendments was that which was signed by the First Minister and subsequently laid before the Senedd. These were hosted online on www.legislation.gov.uk and on www.law.gov.wales. In order to assist both the general public and stakeholders such as businesses, the wider public sector and the third sector, the Welsh Government also created and published online a consolidated version of the most up-to-date Regulations, “red-lined” in order to show changes over time. This was unusual for a Government however I believed that if the Government were expecting the public to comply with these unprecedented Regulations, then it was only right that they were made available in as clear a format as possible, not least given the pace at which changes needed to be understood and the breadth of their application.

Decisions on NPIs up to and including the “Firebreak”

184. On 15 May 2020, the First Minister published a further policy document, "Unlocking our society and economy: continuing the conversation" exhibited as **MEWL/01-83 - INQ000227929**. This set out the Welsh Government's approach to lifting restrictions, including the introduction of a new "traffic light" system to define how restrictions on different areas of Welsh life could begin to be eased. We recognised that until there is a vaccine or effective treatment, we would have to live with the disease and try to control its effects.

185. On 19 May 2020, the MHSS reported that Wales would now be part of the UK wide system for online access to Covid testing. This meant that our testing strategy "Test, Trace, Protect" to enhance health surveillance and undertake effective and extensive contact tracing could be implemented.

(a) Border Controls / Quarantine Requirements

186. At or around this time, the UK Government put forward proposals for border controls / quarantine requirements for all international travellers arriving in England outside of the Common Travel Area between the United Kingdom and the Republic of Ireland (CTA). Border controls were important for public health reasons if community transmission remained low, to reduce the risk of people travelling from a country with a higher rate of infection contributing to community transmission in the UK.

187. The proposals were that (a) all international travellers be required to provide information about themselves at point of entry to England; and (b) they be required to self isolate for 14 days (or until they depart if earlier) on arrival, either at home, in the home of a family member/friend or in a hotel or Government provided accommodation. The intention was that these Regulations would be made on a four nations basis. I was asked by the First Minister to advise on various legal issues that arose out of these proposals.

188. Legal services provided detailed advice on the human rights implications of the isolation provisions, which I exhibit as **MEWL/01-83a – INQ000376505**. I discussed these issues with the Scottish Government's Law Officer (the Lord Advocate) in a call on Sunday 17 May 2020. Legal advice from the UK Government was also shared with us. The UK Government has not waived privilege in respect of their legal advice, and so I say nothing more about it here. On 18 May 2020, I took part in a General Public Sector Ministerial Implementation Group to discuss international travel Regulations. I expressed some concerns about the proportionality and rationality of the proposed

measures, under which people who might well not be infectious would nevertheless be required to isolate for 14 days (with a much more limited suite of reasonable excuses for leaving their homes than under the general Regulations). My view was that Welsh Regulations could make appropriate provision for persons to leave their homes in order to obtain essential supplies, and that the issues were mainly of practicalities and implementation rather than principle. Following the meeting on 18 May 2020 a note of the discussion was circulated which I exhibit as **MEWL/01- 83b – INQ000376500**.

189. I reported on this issue to the rest of Cabinet on the 19 May Ministerial call. The First Minister made the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, SI 2020/574 on 5 June 2020 and Regulations about providing public health information were made shortly afterwards.

190. There were some difficulties in the implementation of these Regulations. I wrote to the Attorney General about this issue on 29 June 2020 which I exhibit above as **MEWL/01-16 - INQ000349651**. I was concerned that passengers whose final destination was in Wales were not being appropriately informed about Welsh legislation upon their arrival at the port or airport in England. I was also concerned that Home Office passenger locator forms, which arriving passengers were required to complete, were not available in Welsh for the benefit of Welsh-speaking passengers returning to the UK. The Attorney General responded on 28 July 2020 which I have exhibited above as **MEWL/01/17 - INQ000349748**.

191. The original international travel Regulations applied to all travelers from outside the CTA, subject to exceptions for essential workers and some others. Over the rest of the summer of 2020, this was to change, with different isolation rules for returnees from different countries at different times (depending on the level of risk from those countries). Wales generally made the same changes as the UK Government, however from 3 September 2020 there was some divergence because we in the Welsh Government considered that passengers arriving from certain countries posed a higher risk than the UK Government had concluded. On that date, the Welsh Regulations on international travel required travelers from Portugal, French Polynesia, Gibraltar and some Greek islands to self-isolate, while the UK Government made no changes.

(b) Further reviews of the Principal Regulations

192. The UK Government increased the sums payable under the Fixed Penalty Notice regime for breach of coronavirus restrictions, with sums increasing rapidly after a first

offence up to an upper limit of £3,200. On 19 May 2020 the First Minister and I were asked to consider whether changes to the level of Fixed Penalty Notice for breaches of the Principal Regulations in Wales were needed. The MA was copied to me. I exhibit the document as **MEWL/01-84 - INQ000145221**. The view of the Welsh Police Forces was that if fines were increased then that would act as a natural deterrent to those intent on breaching the restrictions. It was confirmed that police forces were continuing to use the “4 Es” approach, namely engage, explain, and educate: with enforcement being the last resort. We were advised that there were difficulties with policing the Regulations with the divergence between England and Wales being a particular issue: especially given the position of people from England driving long distances into Wales. From 22 May 2022, the fixed penalties remained at £60 (with a potential reduction to £30 if paid within 14 days) for first offences under the Regulations. However, for a second offence, the fixed penalty was increased to £120, with the penalty doubling for each further offence, to the level of £1,920 for a sixth or subsequent offence.

193. On 23 May 2020 I was copied in to an MA that was sent to the First Minister (MA/FM/1720/20) where the First Minister was asked to designate Chief Constables in Wales to permit them to bring proceedings for offences under the Principal Regulations, and to agree to a request by the Attorney General to make such proceedings “specified proceedings” so that the police could prosecute them under the Single Justice Procedure. This was agreed, and letters to each of the four Welsh police forces designating them for this purpose were signed by the First Minister.

194. As I have explained above, the next 21 day review of the Principal Regulations took place on 27 May 2020. I exhibit the minutes of the Cabinet meeting as **MEWL/01-85 - INQ000048926**. This review followed the decision-making framework I have set out above. Detailed documents were provided for the review, along with the draft MA for the First Minister plus annexes to that advice, including (1) Advice from the CMO (W); (2) Advice from the TAC on the scientific evidence informing the review; (3) summary of recommendations, plus an assessment of the impact of those recommendations; (4) evidence about compliance and support for lockdown measures; (5) detailed assessment of each of the potential easements, including equality implications; and (6) legal and financial advice. Cabinet was reminded of the conditions which had to be met in order to impose or continue restrictions. There was a need to consider, from the information available, whether there was any headroom to relax any restrictions of the lockdown. The data revealed that the number of Covid-19 related deaths in Wales had

reduced with fewer patients in critical care beds. The rate of transmission remained at around 0.87, and though that hadn't reduced significantly, the impact on hospital admissions suggested that the rate was falling. However, this meant that a substantial package of easements could not be considered until suitable measures, such as Test, Trace and Protect were operational. The CMO(W) supported the limited set of easements that had been proposed as they were unlikely to lead to significant increase in the community transmission of the virus, and he considered that it would be important to allow people some respite over the summer. This was confirmed in his written advice.

195. Cabinet noted that compliance and support for lockdown measures remained relatively high. Easing restrictions, where the risks were low, as well as being the proportionate response, could help ensure continued compliance, particularly if those were in areas that particularly mattered to people. The scientific consensus was that the risk of transmission was much lower outside thereby opening up the possibility of activity outdoors, subject to continued distancing. We all agreed that we needed to take account of the length of lockdown on the emotional wellbeing of the public, and there was a risk of non-compliance if changes were not made at this stage. We agreed to change the 'Stay at Home' provisions to "Stay Local", to allow for outdoor activity within an area local to where the person lives, providing social distancing rules were maintained.

196. Given the significance of the proposed change there would be a need for clear public messaging and Guidance on what was meant by local, while reinforcing the need for the two metre physical distancing rule to be maintained. It was not possible to legislate to define "local" as it would mean different things in different parts of Wales, depending for example on whether it was an urban or rural area. A distance of five miles was proposed for the guidance, but with a recognition that this would vary in more rural areas, where people were already travelling greater distances for provisions. As this was provided for in Guidance not Regulations, we often referred to this as "less a rule, more a rule of thumb". We also agreed to allow two households to meet outside, within the five-mile limit, subject to physical distancing being maintained; together with allowing people to meet in private outdoor spaces, such as gardens, balconies and walkways, again with the requirement to physically distance.

197. We carefully considered whether schools and childcare settings could safely reopen at this time, and we noted that the UK Government had announced that some educational settings would be reopening on a phased basis in England. However, we

decided that a critical factor here was having an effective Test, Trace and Protect system in place, which should be possible by the next review period. It was hoped that these could reopen at the next review. We also decided to maintain existing restrictions on businesses given the limited scope to make changes during the current review period.

198. Ministers recognised that, given the timescales for the review, there had not been the opportunity to undertake full equality impact assessments. However, assessments of the equality implications of the proposals had taken place, which reflected the need to take decisions at pace. We had all considered those impacts as part of our deliberations. We had, for example, extended the provisions enabling outdoor contact in private outdoor spaces, to balconies and walkways as well as gardens, recognising that some households (eg single members, those at greater socio-economic disadvantage) might in some parts of Wales be more likely (or at least as likely) to be living in flats as in houses with gardens). Cabinet further noted the decisions that the Cabinet had taken were based on the principles of ensuring equality for all, in line with the Well-being of Future Generations Act.

199. Finally, Cabinet considered a paper on communications and in particular the desire to develop an integrated and consistent approach in the longer term. The paper confirmed that the calm, cautious and reassuring approach of the Welsh Government had been welcomed by the series of focus groups that had been established. We agreed that the proposed “Keep Wales Safe” slogan should become the overarching public health message. However, given the outcome of this review, we agreed that ‘Stay Local’ should be adopted initially before moving to “Keep Wales Safe” in due course. The final MA was submitted to the First Minister. On 29 May 2020, the First Minister announced the outcome of the review, and the Principal Regulations were then amended. Non-essential businesses were advised to use the next three weeks to begin to prepare to reopen. Guidance was updated to improve clarity about what was already permitted under the Regulations.

200. Cabinet meetings continued to take place weekly until September 2020. The 21-day reviews continued on schedule. Key dates included the following.

201. On 1 June 2020, contact tracing began in Wales. On the same date, changes were announced to the shielding plan. The CMO(W)’s advice was that those who were shielding could start to take exercise outdoors. Shielding was likely to remain in place

until September, and the CMO(W) was in discussion with his counterparts in England, Scotland and Northern Ireland to secure a four-nation approach to extending this period.

202. On 3 June 2020, the Minister for Education announced that schools would reopen for all age groups on 29 June 2020. I understand that Kirsty Williams has given evidence about this decision in her witness statement, and I do not repeat that here.

203. On 8 June, I presented a “Restart Action Roadmap” dashboard to Cabinet exhibited as **MEWL/01-86 - INQ000129880**, framed around the Unlocking Society report which would have a focus on informing Cabinet on cross-government actions needed as we reversed the interventions we had introduced. It was presented alongside the Coordination Dashboard exhibited as **MEWL/01-87 - INQ000129881**. I also presented a paper entitled “A Values Based Recovery”, exhibited as **MEWL/01-88 - INQ000129876** which asked Cabinet to consider some possible approaches to a long-term response to the pandemic as a basis for further exploratory discussion with the External Group, to note the ongoing work to understand the most likely scenario for gradual recovery from the pandemic and the interaction with challenges posed by the end of the EU transition period. I made a Written Statement to the Senedd providing an update on this work on 17 June 2020. I exhibit a copy of that statement as **MEWL/01-89 - INQ000336691**.

204. On 9 June 2020, the Welsh Government followed updated advice from the WHO and recommended that people in Wales wear 3-layer face coverings in situations where social distancing measures can be more difficult, e.g., on public transport. However, we reiterated that evidence was clear that maintaining a 2-metre distance and good hand hygiene was the most effective way to protect against coronavirus. Further scientific evidence was needed on the benefits to the wider public of wearing face coverings.

205. The next review of the Principal Regulations took place on 17 June 2020, following the by now well-established process I have described above. I exhibit the Cabinet minutes as **MEWL/01-90 - INQ00048799**. The health update confirmed that the R rate remained below 1 and that the rate of infection was now at its lowest in the last 3 months. The CMO(W)'s advice was that mindful of the adverse effects on wellbeing of the restrictions, we should take advantage of the summer months, where there are more opportunities to be outdoors, and we should cautiously move towards reducing the wider economic and societal impacts of the pandemic. This suggested that there was

some room for manoeuvre in easing some of the lockdown measures. Cabinet decided that all non-essential retail businesses, childcare facilities and the housing market could reopen, as well as permitting private prayer in places of worship. Schools were to return on 29 June. We intended that the requirement for people to “Stay Local” was to remain in place until 6 July 2020. Preparations began on reopening the visitor economy and hospitality sector under social distancing rules. The First Minister made a Written Statement to the Senedd confirming these changes on 19 June 2020. The same day, regulations were made to amend the Principal Regulations with effect from 22 June. We decided not to follow the UK Government in moving to a 28 day review cycle.

206. The CCG met again on the 24 June 2020. The CMO(W) provided an update confirming that the ‘R’ rate of infection was somewhere between 0.6 and 1 in Wales. Given the low transmission rates, the R number was becoming a less accurate measure of infection and there was a need to look at other indicators such as occupancy of critical care beds. The CMO noted that the science behind the two-metre safe distance rule as an effective barrier against the transmission of the virus was clear, but where this was not possible, appropriate mitigations should still be put in place. In addition, the outdoors was a safer environment for people to visit restaurants and cafes providing they did not congregate. Judge Ray Singh and Professor Emmanuel Ogbonna attended this meeting, to speak about the BAME Covid-19 Advisory Group’s work. The BAME Socio-Economic Sub-Group report was published on 25 June and copies circulated to all Ministers.

207. Around this time, even as restrictions were generally being relaxed across Wales, there was concern about localised outbreaks. There had been a particular cluster of cases at a meat processing plant in Anglesey/Ynys Mon. Welsh Government lawyers were asked to advise policy officials on the potential use of local restrictions. On 22 June, I discussed this with Helen Lentle, and on 24 June Legal Services produced a document indicating that powers under the 1984 Act could be used in relation to part only of Wales, i.e. that restrictions could be implemented in a particular local area if required. I exhibit the document as **MEWL/01-90a – INQ000376516**.

208. Cabinet met again on 29 June and agreed “in principle” to allow two separate households to form a single household: if the situation remained favourable in terms of prevalence of Covid-19 then that change would be implemented from Monday 6 July. The First Minister advised Cabinet that he had met with the Chancellor of the Duchy of Lancaster and other UK Ministers earlier that day to discuss amendments to the International Travel Regulations. Detailed evidence would be provided by the UK

Government relating to the changes proposed to those measures, which entailed the creation of a list of exempt countries or territories considered to be of lower risk in terms of imported cases. Cabinet agreed that it was important that it took informed decisions based on the evidence. It was noted that as long as there was not anything in the further evidence and advice that would cause particular difficulty for Wales, the Welsh Ministers would make the necessary changes to the Welsh International Travel Regulations in line with the UK Government's proposed amendments. These changes were made with effect from 10 July.

209. David Davies MP, then Parliamentary Under-Secretary of State for Wales in the Wales office, attended for part of the CCG meeting on 1 July 2020. The CMO(W) confirmed that infection rates remained relatively low in Wales. The data, the CMO reported, suggested that men were more likely to suffer from the virus than women; that older people were more vulnerable than the young; and that those who were fragile were more susceptible to complications. Where there were local outbreaks identified, the CMO(W) noted that there would need to be substantial community transmission before a local lockdown was recommended.

210. On 3 July 2020, the First Minister confirmed that the "Stay Local" provisions would be removed from 6 July 2020 to allow for travel anywhere (in line with Cabinet's decision on 26 June 2020 to review this requirement with the intention of lifting it by 6 July 2020) and to enable the formation of an extended household, consisting of two households joining together exclusively. I exhibit MA/FM/2107/20 as **MEWL/01-91 - INQ000349654** and the written statement published on 3 July 2020 as **MEWL/01-92 - INQ000023250**.

211. On 4 July 2020 the UK Government decided to change its advice on social distancing from two metres to one metre. We did not change our advice: our general position was that social distancing of two metres should remain in place. This was more consistent with the scientific advice we received at this time. Allowing people to be in closer proximity increased the risk of transmission. The CMO(W) issued a statement to the public on the 8 July 2020 outlining the scientific reasoning for this decision (as well as his advice on the use of face coverings). A copy of this statement is exhibited as **MEWL/01-93 - INQ000320905**.

212. Cabinet met on 7 July to consider the 21-day review. I exhibit the minutes as **MEWL/01-94 - INQ000048852**. The CMO(W) provided an update on virus transmission rates and confirmed that the situation was stable and improving with around seven to

eight new cases a day being confirmed. Wales had reported that Sunday was the first day of no Covid-19 related deaths since 19 March 2020. The summer period presented a safer opportunity to ease restrictions, however, there was a need for mitigation measures, such as continuing the messaging around social distancing and personal hygiene. Test, Trace and Protect was in place and had helped to bring under control the two outbreaks in North Wales and an incident in Merthyr Tydfil. CMO(W) also noted that it was important to consider what was happening elsewhere in the UK and overseas, such as Australia, particularly as the Southern Hemisphere was experiencing Winter. Overall, he reported, there was headroom to release some of the restrictions. Cabinet decided that :

- (1) From, 11 July self-contained accommodation could be reopened.
- (2) From 13th July restrictions, on hair salons, barbers, mobile hairdressers and outdoor hospitality would be lifted. There would be a need for further definition on what types of indoor attractions could open.
- (3) Places of worship would also be able to restart outdoor services and some indoor congregational services providing Covid-secure guidance was followed.

213. We agreed that maintaining the step-by-step approach was the correct approach. The Principal Regulations were revoked and replaced with the Health Protection (Coronavirus Restrictions) (No 2) (Wales) Regulations 2020, which reflected the change in the underlying framework of restrictions to a "Stay Local" approach. The First Minister also announced the lifting of other restrictions in other areas throughout July, including playgrounds and outdoor gyms, tourist accommodation and close contact services such as beauty salons, indoor cinemas and museums from 27 July 2020.

214. There was a further CCG meeting on 14 July 2020. The minutes are exhibited as **MEWL/01-95 - INQ000312134**. The CMO(W)'s update confirmed that the picture was continuing to improve. He reported that though there had been a great deal of coverage in the media about the use of face coverings, the reality was that behavioural, management and environmental measures remained the most effective mitigations. PPE should also be used when necessary, as a final barrier. There was also a sense that since other measures were more effective, reliance on face coverings might create an exaggerated sense of security which might weaken adherence to those other measures. However, from 27 July, we did introduce a requirement to wear face

coverings on public transport in Wales: this was justified by the fact that it was unrealistic for two-metre social distancing to be maintained in most public transport vehicles.

215. The next 21-day review took place on 28 July. I did not attend this meeting, but I reviewed the papers and the minutes, which I exhibit as **MEWL/01-96 - INQ000048857**. The CMO(W)'s advice was that circumstances were favourable to continue to ease some of the restrictions. The First Minister noted that the proposal was for the majority of the headroom to be used to gradually and cautiously relax some of the restrictions on people meeting each other. Cabinet confirmed that indoor hospitality, bowling alleys, auction houses and bingo halls, along with outdoor theatres, could re-open from 3 August, providing social distancing requirements were in place. In addition, from this date, indoor play areas could re-open, which would be in line with proposals for the relaxation on social distancing for children aged between 0 and 11. It was further agreed that children between the ages of 0 and 11 would no longer need to maintain physical distancing between each other or with adults, both indoors and outdoors. This reflected the guidance for schools and was based on evidence about significantly lower vulnerability to, and transmission of, the virus amongst younger children. The restrictions on meeting others outdoors would be relaxed and would allow up to 30 people, adults and children, to meet outdoors providing physical distancing was maintained. Given the likelihood of a second wave later in the year, it was agreed that it would be prudent to relax the rules as much as possible at this stage while conditions were most favourable so as to maximise the likelihood of compliance with possible future restrictions at times of higher transmission.

216. The Regulations were also amended to allow four households or two extended households to merge into one larger extended unit and to allow two or more households to meet indoors, providing social distancing was exercised. People could also meet with others indoors in premises that were regulated. However, concerns were expressed about relaxing restrictions indoors. Reports from England indicated around 70% of outbreaks had been linked to transmission within residential dwellings. This was also the case with the outbreak in Melbourne, Australia. We considered the evidence and took the view that there was not enough headroom at this stage to allow casinos, theatres, concert and conference halls, along with nightclubs and skating rinks to open.

217. The 4 August 2020 CCG meeting was abandoned due to IT issues: as such a briefing note was circulated in place of the meeting which I exhibit as **MEWL/01-97 - INQ000310296**. That note confirmed that there was a stable picture in respect of

transmission with seasonal mortality rates reduced to below average. But it was important to remain generally cautious given the resurgence in many countries and uncontrolled infections in many areas. The impact of re-opening hospitality in Wales would take some time to become apparent, too. An interim review of the Principal Regulations took place on 6 August 2020 exhibited as **MEWL/01-98 - INQ000176856**. There was no Cabinet meeting on this occasion. The First Minister decided to reopen swimming pools, leisure centres, indoor fitness centres and gyms, as well as indoor play areas, from 10 August 2020. However, the need to be vigilant was emphasised, given the higher rates in Greater Manchester (and its impact on North Wales) and in a number of other countries who were showing signs of a second wave. Detailed assessments of each of these proposals were carried out, along with a summary impact assessment. Local authorities were also given enhanced powers to enforce the Regulations. The First Minister announced these measures on 7 August 2020 and the Regulations were amended with effect from 10 August 2020.

218. The Portfolio Board for Continuity and Recovery met on 11 August 2020. The minutes are exhibited as **MEWL/01-99-INQ000349621**. Most of the meeting concerned economic recovery from the pandemic, with a particular emphasis on regional economies within Wales. The meeting also considered the prospect of local lockdowns, and the economic and supply-chain effects of such interventions. This stemmed from a tabletop exercise that officials had undertaken on 30 July at my instigation modelling a localised response to a virus outbreak at a regionally-important employer.

219. On 12 August I received TAC advice on face coverings (exhibited as **MEWL/01-100 - INQ000228031**), to be discussed by Cabinet at a Ministerial call on 13 August. The advice suggested that although expert opinion was not unanimous, in circumstances of sustained or growing community transmission there were benefits to the use of face coverings indoors, and that advice to the public (as opposed to a legal requirement) to wear face coverings would not see wide adherence. Equality considerations were noted and exemptions to any requirement discussed. It was agreed that the Government would move to make face coverings mandatory in some further settings if the virus reached certain levels of circulation. I exhibit a note of the Ministerial call as **MEWL/01-101 - INQ000349766**. We also noted the public generally supported the use of face coverings now.

220. Cabinet met to consider the 21-day review on 18 August. I exhibit the minutes as **MEWL/01-102 - INQ000048862**. The CMO (W) confirmed that the number of new daily

cases being reported was between 15 and 24, with the 'R' rate between 0.8 and 1.1. Covid-19 related hospital admission rates had stabilised. It was noted that work was continuing to develop a vaccine and that one may be available sometime in the Autumn, but it was anticipated there would be a limited supply. The planned reopening of schools was the priority for available headroom. There was some headroom for further controlled easing in addition to preparing for schools to reopen but there was a need to be mindful of what was happening elsewhere in the UK. The increase of cases in England was cause for concern. Cabinet confirmed that from Saturday 22 August, up to four households, or two extended households, could merge into a larger extended household. In addition, indoor meals for up to 30 people, following a wedding, civil partnership or funeral, would be allowed. Restrictions were further relaxed from 31 August 2020 (and casinos were allowed to open). We agreed to pilot small outdoor events of up to 100 people to consider how larger gatherings might be managed.

221. On 18 August 2020, the Welsh Government published a Coronavirus Control Plan, which had been discussed by Ministers in draft on a Ministerial Call that morning. I exhibit the plan as **MEWL/01-103 - INQ000349794**. This set out how people and organisations across Wales should work together to manage the risks of coronavirus as we headed into autumn and winter. It confirmed that the Welsh Government's approach to controlling coronavirus was based on the principles of caution, proportionality and subsidiarity. It acknowledged that coronavirus had not gone away, and that we had to be increasingly vigilant as we moved into autumn and winter. The Control Plan set out the indicators for imposing local or regional measures to protect public health, that apply to a specific geographic area. If local or regional measures were not found sufficient, then further all-Wales measures might need to be reintroduced.

222. At around this time, the UK Government indicated that they would introduce a new offence under their public health regulations, with a FPN of £10,000, of organising illegal raves, other unlicensed music events, or unlawful gatherings of more than 30 people. One such event had already come to the attention of North Wales Police, and police forces in Wales asked the Welsh Government to adopt a similar position. We agreed to this request, and the Principal Regulations were amended to create a specific offence of being involved in organising a relevant unlicensed music event. They made provision for an FPN of £10,000 if breached (as an alternative to prosecution). We agreed to keep the use of FPNs under review. Shortly after these Regulations were implemented

the police broke up an illegal rave in Banwen in my constituency, and I understand that the organisers were issued with a £10,000 FPNs.

223. The last CCG meeting was held on 25 August 2020. The DCMO's update was that the situation was continuing to improve. A small number of cases were being identified each day through Test, Trace and Protect, with 19 new cases reported the previous day from 4,921 tests, reflecting a 0.4% positivity rate. There had been low numbers of calls to the 111 line and the use of hospital beds for Covid-19 was still in decline, with 270 beds in total Wales occupied by suspected or confirmed Covid-19 patients, of which only 4 were intensive care beds. It was noted that the recent outbreak in north Wales was under control, but further flare-ups were expected. However, there was some evidence to suggest that not all individuals or businesses were obeying the social distancing guidance or abiding by the need to quarantine following travel abroad, which could add to the upwards pressure on the 'R' number and reduce the headroom available for Ministers to continue their relaxation of the Regulations.

(c) Local restrictions

224. In early September, there was a significant rise in confirmed Covid cases in Caerphilly borough over a very short space of time. These were linked to holiday travel abroad, people socialising indoors and not following social distancing guidelines. On 7 September 2020, Ministers received a further update, including an epidemiological report from the local health board. The MHSS announced that restrictions would be imposed across Caerphilly to prevent a local outbreak of coronavirus from spreading. In broad terms, people were not allowed to enter or leave the Caerphilly County Borough Council area without a reasonable excuse, everyone over 11 was required to wear face coverings in indoor areas (subject to certain exceptions) and people were only permitted to meet outdoors. An update was provided in the Ministerial call of 8 September 2020. I exhibit the minutes of this meeting as **MEWL/01-104 - INQ000349850**. As decisions were made at pace to respond to a rapidly evolving local situation, no freestanding equality impact assessment was carried out, but the impact of the measures was set out in the MA. This advice, MA/FM/2952/20, was copied to all Ministers, and to me. Regulations had been drafted swiftly, and on the afternoon of 8 September the First Minister agreed the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No.8) (Caerphilly) Regulations 2020, which came into force that evening. These Regulations introduced the concept of Local Health Protection Areas (LPHA) as areas with heightened restrictions aimed at suppressing the spread of the virus. Other parts of Wales became subject to similar regulations in

subsequent weeks. I considered that these measures were a proportionate response to address a local outbreak, enabling containment of that outbreak without unduly restricting economic and educational activities. These regulations were also subject to a similar 21-day review.

225.I attended the Shadow Social Partnership Council with the First Minister and the Minister for Education on 7 September 2020. I had been invited to attend to provide an update on my work relating to the Covid recovery.

226.Cabinet met on 8 September to carry out the next 21-day review. I exhibit the minutes as **MEWL/01-105 - INQ000048867**. The CMO(W) confirmed that he was concerned about what he termed the “alarming” increase in cases in Wales and across the UK. Over the past four days the rate of confirmed infection in Wales had tripled to 150 cases, the largest number of daily infections since May. House parties and private indoor gatherings appeared to be the source of the increase in infection rates, rather than controlled environments. Conditions had changed significantly since the last review and there was a need to be more cautious. Given the change in circumstances, Cabinet agreed that the restrictions on households meeting with other households in the home should remain in force following the current review period. The MHSS and I had previously advocated for the restrictions to remain in place (see papers for 21-day review meeting of 7 September). Cabinet agreed that from 12 September ‘a gathering’ should be more narrowly defined, which would capture only social interaction with people from other households. Cabinet agreed that a new definition would be introduced by the amended Regulations. Those changes would be technical in nature with the aim of simplifying and reflecting the current position.

227.It was also agreed that Local Authorities should be provided with new powers to close premises on public health grounds. That would be a ‘stand-alone’ power, which would be different to Premises Improvement Notices and Premises Closure Notices, with the Welsh Ministers having to be notified when used. The Welsh Ministers would retain concurrent powers to enable them to act in any event.

228.Given the CMO(W)’s view and the changing picture in Wales in terms of infection, Cabinet agreed that it would not relax any further restrictions. The Government’s priority was to ensure schools could remain open, and some restrictions would be reimposed to ensure that this happened. We also introduced a maximum limit of six on the number of people who can meet indoors at any one time, from the same exclusive household

group. Given that transmission was rising by this point, we decided, in line with the TAC advice from August discussed above, to extend the requirement to wear face coverings beyond public transport, subject to exceptions where it was impracticable, and on equalities grounds. All residents in Wales over the age of 11 were required to wear face coverings in most indoor public spaces, subject to those exceptions. This was discussed in a Ministerial call on 10 September and then announced publicly, which I exhibit as **MEWL/01-106 - INQ000023258**.

229. We held a Cabinet “away day”, which in the event was held in hybrid format at Cathays Park and over Teams, on 9 September 2020. Cabinet considered plans and scenarios for the coming winter in terms of the pandemic, and longer-term recovery work. The winter plan considered interventions which included “circuit breakers” and further lockdowns. I exhibit the Winter Protection Plan as **MEWL/01-107 - INQ000349823**. I presented a paper on recovery from the pandemic and possible policy priorities, which were influenced by the expert roundtables that had taken place earlier in the year. The paper, which I exhibit as **MEWL/01-108 - INQ000349809** suggested interventions within the Welsh Government’s powers on a number of longer-term issues. I also presented a summary of suggestions and challenges for the longer term from the Continuity and Recovery Expert Group which had been meeting in May and, later in the summer, the Expert Advisory Panel, which I exhibit as **MEWL/01-109 - INQ000349712**.

230. On 21 September 2020, the four Chief Medical Officers for Wales, England, Scotland and Northern Ireland recommended that the Covid-19 alert level should increase to Level 4 – i.e. that the virus was in general circulation and transmission is high or rising exponentially.

231. Further local restrictions were announced for Rhondda Cynon Taff on 16 September 2020, with Regulations made and coming into force the following day. Cabinet met again on 21 September where the First Minister informed Cabinet that there had been a need for urgent action to combat the spread of the virus in four more Local Authority areas: Blaenau Gwent; Bridgend; Merthyr Tydfil; and Newport. Accordingly, from 6pm the following day, residents within these local authority areas would be subject to more stringent restrictions. Restrictions on the times licensed premises could sell alcohol were also introduced across all LHAs. On 22 September I was copied into the First Minister’s MA on these decisions – MA/FM/3119/20, which is exhibited as **MEWL/01-110 - INQ000321149**. This MA reflected the First Minister’s discussion at COBR that

morning, where it was noted that evidence from SAGE linked coronavirus transmission to licensed premises.

232. Further local restrictions were introduced in Cardiff, Llanelli and Swansea from 26 September, and for Neath Port Talbot, Torfaen and the Vale of Glamorgan from 28 September. Local restrictions were imposed across parts of north Wales on 29 September 2020.

233. Cabinet next met on 28 September and discussed some issues relevant to the 21-day review in advance of the formal Cabinet discussion later that week, including whether to allow single adult households to form an extended household with one other household in LHPAs.

234. At that Cabinet, I presented a draft of *Reconstruction after Covid-19: Challenges and Priorities* CAB(20-21)06 which emphasised that the Welsh Government's approach to reconstruction after Covid-19 would be driven by the Government's existing vision for a more prosperous, equal and greener Wales. The paper summarised the feedback received through the 'our future Wales' mailbox and from the numerous round table discussions with a breadth of sectors from Welsh society. Cabinet approved this draft report and it was published by the First Minister and me on 6 October 2020: Welsh Government Covid-19 Reconstruction: Challenges and Priorities which I exhibit as **MEWL/01-111 - INQ000066123**. I also introduced a new Reconstruction and Stabilisation Dashboard, which replaced the Coordination Dashboard and Restart Dashboard. The latest Data Monitor was again circulated. The Covid-19 Reconstruction document emphasised that the impact of the virus had not been evenly distributed across society, that the pandemic had exacerbated existing inequalities, and the most vulnerable had been hardest hit. The pandemic had hit after a decade of austerity, in which public services had seen reduced investment and incomes in the lives of many people had been held back. Some communities had been affected more than others: either from a health perspective (such as Black Asian and Minority Ethnic communities and disabled people) or economically (especially those working in certain sectors). We knew that young people in particular would carry the burden of the pandemic with them through their lives, and that we would need to act to mitigate that. The document then set out our 8 key priorities for reconstruction (see pg 4). We confirmed that we would focus our efforts on supporting those who have been most adversely affected by Covid-19, including children and young people, women, those in low paid and insecure

employment, people from Black, Asian and Minority Ethnic communities and disabled people. We then set out our more detailed proposals.

235. Cabinet undertook its 21 day review on 1 October. I exhibit the minutes as **MEWL/01-112 – INQ000048785**. CMO(W) provided an update which confirmed that there had been a significant increase in new cases since the last review of the Regulations, with 398 being reported the previous day. There were now four to five contacts per case, which was a significant increase from one to two contacts three weeks ago, demonstrating that people were mixing more. University towns, such as Aberystwyth and Swansea, appeared to be hotspots. Cabinet was told that there had been behavioural change amongst the general public, particularly in relation to people returning from abroad and households mixing. Infections within hospitals were also increasing. More people over the age of 60 were contracting the virus leading to an increase in the number of cases in hospital intensive care beds. The number of people in hospital beds with or suspected to have the virus had increased from 168 at the previous review to 366. It was inevitable that the number of Covid-19 deaths would rise.

236. CMO(W) stated that the local lockdowns appeared to be working well, with positive data emerging from Caerphilly and infection rates in Newport stabilising. There was also positive news in that the number of individuals being traced through TTP was high, at 86%. Cabinet agreed that, given the deteriorating public health situation and the numerous local restrictions in place in Wales, the Welsh Government should not be lifting restrictions at a national level. We discussed proposals to mitigate loneliness and isolation for those living alone in LHPA, and agreed to allow single adult households, including single parents within those areas to form a “bubble” with another household.

237. On 1 October, Cabinet also considered Fixed Penalty Notices in the context of house parties. It was recognised that there had been a need earlier in the year for the Government to act swiftly to put in place stronger measures to deter large illegal gatherings, such as raves, but there were obvious ethical questions as to whether a FPN as high as £10,000 should be applied to illegal house parties or other circumstances. I had also discussed this on 30 September at a Cabinet sub-committee on justice, and a review was commissioned. Cabinet noted that it would be important to undertake an equality impact assessment on any proposals before introducing them in Wales. Officials were exploring the evidence and taking the views of the police and local authorities on the extent of the problem, the definition of a house party and the

appropriate level of fine. On 6 October, a rapid review paper was produced outlining key questions to be resolved, and Cabinet would return to this issue in November. I exhibit a copy of this paper as **MEWL/01-113 – INQ000349910**.

238. At the time, local restrictions were introduced based on the principles of subsidiarity and proportionality. For instance, it was difficult to explain to residents in areas where there were low numbers of coronavirus cases why they should comply with stringent restrictions when the outbreaks were happening in other parts of the country. We were mindful of the need constantly to be clear that our actions were justified with reference to the public health situation on the ground. Imposing local restrictions enabled residents in parts of the country not subject to the lockdowns to exercise freedoms for as long as possible and to minimise the impact on the economy and services in those areas. The local lockdowns did have an effect in that they tackled and stabilised specific outbreaks, slowing down transmission in those areas. We acted early and decisively in different parts of Wales and so were in a better position than some other parts of the United Kingdom. However, with hindsight, the local restrictions clearly were not effective enough. I think there were difficulties with local restrictions, which I set out below. We were later advised that while local lockdowns have an effect initially, this wanes over a period of 21-28 days after which growth returns even as restrictions remain. We were also advised that the national firebreak had a greater impact over a shorter period of time than local restrictions. I exhibit the Cabinet paper on possible Regulatory interventions over the winter as **MEWL/01-114 - INQ000048996**.

239. In entering into local lockdowns, we were mindful of the legal requirements to act proportionately to the public health situation. In seeking to differentiate on the basis of local transmissions, we were correctly seeking to reflect the balance of harms. The local lockdowns did contribute to us limiting transmission but proved (as I believe was the experience elsewhere) not to be sufficiently effective. My own view is that perhaps particularly in a small nation such as Wales, a national approach signals something more serious than a local approach, which will tend to encourage adherence. On a practical basis the public were not used to thinking of county boundaries as relevant to the patterns of their daily life and may have found this hard to relate to. We learned the lessons quickly and moved instead to introduce a national firebreak.

240. There was a further Cabinet meeting on 5 October. I exhibit the minutes of that meeting as **MEWL/01-115 - INQ000349936**. The First Minister identified three key issues for us to consider in the coming week: the review of local lockdowns, our approach to Fixed

Penalty Notices and arrangements for the £500 payment for those on lower incomes who were required to self isolate.

241. The First Minister noted at Cabinet the work that the Star Chamber had done: it had dealt with over £4bn of expenditure, having to make spending recommendations quickly against pressing demands. The Star Chamber was stood down on 7 October 2020.

Firebreak Restrictions

242. Cabinet met on 12 October. I exhibit the minutes as **MEWL/01-116 - INQ000129903**.

The First Minister informed Cabinet that, earlier that day, he had attended a COBR meeting, chaired by the Prime Minister, and the Winter Summit, which had been led by the Chancellor of the Duchy of Lancaster. Both the First Ministers of Scotland and Northern Ireland had been in attendance. The UK Government was seeing even higher transmission rates. On the same day, the UK Government announced a new three tiered system of local Covid-19 alert levels in England. The Welsh Government was concerned that there was nothing preventing those in high prevalence areas in England from entering areas of lower prevalence in Wales. I understand that the First Minister wrote to the Prime Minister about this issue, but no response was received. Legal advice was provided on introducing Welsh Regulations to prevent this, and I discussed this with the First Minister. I exhibit the legal advice as **MEWL/01-117 - INQ000349939**. On 14 October, Regulations were then made to prevent people who lived in areas with high coronavirus infection rates across England, Scotland and Northern Ireland from travelling to Wales.

243. Cabinet met again on 15 October, in order to consider whether to implement a “firebreak” across the whole of Wales in order to suppress transmission of the virus, which was increasing rapidly at this time. I exhibit the minutes of this meeting as **MEWL/01-118 - INQ00048796**. Ministers were asked to take a decision in principle at this stage to allow further work to take place to firm up proposals. We were provided with comprehensive advice, including legal advice exhibited as **MEWL/01-119 - INQ00048874** which I had cleared in advance. There was also an equality impact assessment which I exhibit as **MEWL/01-120 - INQ00048873**. I was glad to see this, as I had reminded officials in late September about the need for impact assessments (as they had not always been produced for decisions on local restrictions, given the urgency with which the local restrictions had been imposed). I was assured by officials that overarching Integrated Impact Assessments were being produced in relation to all “social interaction related restrictions” which could then be used as a source of

information in future. I exhibit an email chain demonstrating this as **MEWL/01-121 - INQ000349948**.

244. Advice from the CMO(W) and CSAH and the TAC all reflected that of the UK Government's Chief Scientific Adviser, Sir Patrick Vallance, to COBR: namely, that the UK Government's proposals for a three tier system would not stop the rapid spread of the virus and a "circuit breaker" was the preferred option. Scientific advice was that a minimum of a two week lockdown was required, but three weeks was preferable. However, the longer the restrictions remained in place, the greater the economic, financial and social impact on the well-being of individuals. I was aware that these measures would have significant negative equality impacts and impacts on children's rights. A balance would need to be struck but the risk to public health was such that I considered it imperative to implement the fire break: the virus risked overwhelming the NHS and causing significant loss of life if it was not brought back under control.

245. Modelling evidence from Swansea University suggested that a two week lockdown had the potential to reduce the 'R' rate from around 1.4 to 0.8. There had been a significant increase in the numbers hospitalised with Covid-19 related symptoms. Actions taken to date in Wales had slowed the rate increase, but clearly not by enough.

246. We were all agreed that our main priority would be to keep schools and childcare settings open where possible, with the aim of supporting key workers and protecting children. The first week of the lockdown would be in half term. For the second week, it was proposed that primary schools would be open. For secondary schools, it was proposed that there would be classroom learning, but delivered online. We recognised that a firebreak would have a significant impact on the hospitality sector. Ultimately, we considered that the more stringent the lockdown, the quicker the virus could be brought back under control.

247. Proposals for financial support packages were considered, and once firmed up, funding would be released from the Covid-19 reserve. The necessary cover had been agreed with the UK Treasury. However, there was an added complication of establishing a mechanism to deliver the financial support to all those effected.

248. Cabinet agreed in principle to introducing a firebreak from Friday 23 October to cover three weekends, and two working weeks. Further work was to be completed by officials and Cabinet was to meet again to consider the recommendations in detail.

249. Cabinet reconvened on Sunday 18 October to consider the detail of the restrictions to be imposed. I exhibit the minutes as **MEWL/01-122 – INQ000048801**. We were provided with further advice, including legal advice and detailed equality impact and children's rights assessments. I met with Helen Lentle and the First Minister's Special Adviser, in advance of the meeting to discuss the advice. The First Minister informed Cabinet that in light of the "in principle" decision taken a few days before, there was now a need to decide on the substantive restrictions to be imposed. TAC conclusions were clear that, without intervention, the continued increase of cases of Covid-19 in Wales, in hospitals and in ICUs, would be too high for the NHS to sustain. In order to balance the four harms, TAC recommended a national firebreak of 2-3 weeks to reduce cases to a manageable level, and then introducing a set of sustainable, national interventions to keep R around 1.

250. Cabinet considered alternative approaches including continuing to tighten either national or local restrictions, but those options were less likely to be effective, and they would potentially create greater uncertainty and fatigue.

251. We considered again what we would do about secondary schools following the half term break, which ended at the end of the first week of the proposed firebreak period. TAC advice was that any school that remained open eroded the impact of the restrictions and closing all educational settings would make a significant impact on the 'R' rate. The Minister for Education strongly advocated in favour of a full reopening of secondary schools after half-term. Like other ministers, I was concerned about children's learning loss and their wider wellbeing and wanted to see children at school as much as possible. We were told that local authorities wanted schools to remain open. We decided that we needed further advice as to whether there was a greater risk of transmission from secondary pupils mixing in unregulated settings as opposed to schools. The decision was adjourned pending further advice on this point from officials.

252. Cabinet agreed that a "stay at home" requirement should be implemented, subject to "reasonable excuses" which should be kept to a minimum. The firebreak would have a significant impact on non-essential retail and hospitality, and significant business support arrangements would need to be put in place.

253. The First Minister decided that Cabinet would meet again the following morning to finalise the necessary decisions including the issue of secondary schools and other matters including fixed penalty notices and proposals for those shielding.

254. We reconvened on the morning of 19 October. I exhibit the minutes of the meeting as **MEWL/01-123 – INQ000048802**. The CMO(W) confirmed that for the first time during the second wave of infections, the incidence for Wales measured higher than 100 cases per 100,000 people. It was particularly concerning that the rate of infection within the over 60s that was now 80 cases within 100,000, which was close to the rates seen in March. The TAC advice was that there should be a comprehensive fire-break to prevent the exponential rise in cases, as single interventions were not likely to reduce the incidence. In addition, if schools were to remain open, then a wide range of other measures should be put in place in order to manage overall transmission rates. However, a limit on the number of pupils in schools would help reduce the rate of infection.

255. It was agreed that there would be a two week/three weekend fire-break, starting at 6pm on Friday 23 October and ending on Monday 9 November. Restrictions would be stringent, broadly equivalent to those imposed in March 2020, because any relaxation of restrictions would add to the marginal risk and undermine the efficacy of the fire-break. However, there would be no restriction on the number of times per day exercise could be taken outside the home. In designing exceptions and mitigations, we prioritised children's rights; guidance made clear that exercise included children's play, and parks would remain open (exhibited as **MEWL/01-124 - INQ000048878**).

256. We balanced the four harms in taking the decision about schools: ultimately, we decided that childcare settings would stay open during the firebreak, while primary and special schools would re-open, as normal, after half-term. For secondary schools, we decided that they should re-open after the half-term for children in years seven and eight only. We were advised that there was a higher transmission risk among older secondary school children, and older children were better able to access remote learning. Pupils would be able to attend schools to take exams but others would continue their learning from home for that week.

257. The First Minister confirmed that he was awaiting a response to his letter to the Chancellor of the Exchequer seeking early access to the new expanded Job Support Scheme for Welsh businesses, which would avoid the need for them to apply to both

the Job Retention Scheme and the Job Support Scheme during the fire-break period. Given the urgency, the Welsh Government had offered to pay the extra costs to help businesses retain staff. Had the Chancellor permitted early access to the support scheme for Welsh businesses then I think we very well might have imposed a three-week firebreak in Wales. TAC, after all, were recommending 2-3 weeks. In the absence of that support, I do not think a three week fire-break period was a realistic option. Later, the full suite of economic assistance for businesses was made available as a result of the four-week lockdown that England introduced during November. To my mind, it was egregious that the Chancellor of the Exchequer – a minister with responsibilities for the whole United Kingdom – failed to provide the Welsh Government with the financial support for the October-November 'fire break' that he made available as a result of the English lockdown shortly thereafter.

258. The CMO(W) stated that he would write to all the people who were on the shielded list later that week to ensure they had the most up to date advice but was clear that they would not be asked to return to the same level of shielding as they were in March. It would be important to engage with the Black, Asian and minority ethnic outreach workers and consider how best to communicate with those without ready digital access.

259. In the Ministerial call on 26 October the First Minister introduced the circulated paper on options available to address issues identified over the weekend with the sale of "non-essential" items in supermarkets. The note of the ministerial call is exhibited as **MEWL/01-125 – INQ000349964**. Under the Regulations, shops which were permitted to open were required to close areas in which they sold goods which were, broadly, non-essential. With other Ministers and officials, I met with supermarket representatives later that day to explore the practical problems and concerns which had emerged over the weekend. We discussed the interpretation of guidance and encouraged a more pragmatic approach from the industry and to remind them of the discretion they had. We also reminded retailers that, for example, items normally sold in pharmacies could be sold under the "firebreak" Regulations in other shops such as supermarkets. Further guidance was issued the following day.

260. Cabinet met again on 29 October to consider what restrictions would be in place at the end of the fire break. I exhibit the minutes as **MEWL/01-126 – INQ000048929**. The fundamental objective was to secure behavioural change among the public, with messaging emphasising that people in Wales should consider not simply what the law permitted them to do, but instead how they should act to reduce transmission where

possible. The CMO(W) provided an update. It was expected that the fire-break in Wales would have a positive impact on the transmission curve, but it would take some time for the results to emerge. We carefully considered all scientific and policy advice. We agreed that after the fire break, all schools should return to full operations from 9 November, with blended learning provided for those required to self-isolate. It was agreed that there should be a greater emphasis on remote working. We knew that there may be a need for further interventions during the winter.

261. The CMO(W) advised that household mixing was the source of most transmissions, and restrictions to that end were needed; we sought further advice on this issue to inform a decision at a later date. We agreed that self-isolation should become a legal requirement and people would be required to self-isolate as soon as they developed symptoms and not after they had been tested.

262. Cabinet also discussed the level of Fixed Penalty Notices (FPNs) that should be applied; it was recognised that they would need to be proportionate, consistent with similar offences. There was a concern that there had been a disproportionate number of FPNs issued to people from Black, Asian and minority ethnic communities. Officials were asked to gather evidence on how the FPNs had been applied, discuss proposals with the police and provide further advice to Ministers on the level of fines and how they should be applied.

263. Cabinet then met again on 1 November to further consider the post fire-break restrictions. I exhibit the minutes as **MEWL/01-127 – INQ000048786**. On household mixing, we decided that households would only be able to form a bubble with one other household during the present review period, with guidance setting out how families could be supported on compassionate grounds. In addition, for the next two weeks private gardens would be treated as part of the home, in which only extended households would be able to meet. There would be a maximum of 15 people for indoor gatherings and 30 for outdoors. Children of under 11 would be exempt from these restrictions.

264. The First Minister noted that the position had been complicated by the UK Government's decision, the previous day, to place England in a 'lockdown' that would commence on Thursday 5 November and last until 2 December at the earliest. I understood that the longer duration of the English lockdown was a result of it starting

- later; our advice was that if measures were delayed, they would have to be more stringent and in force for longer in order to be effective.
265. Cabinet also considered FPNs, noting that the police remained supportive of the Government's approach, and endorsing the principle of a sliding scale of penalty for repeat offenders. Cabinet noted that it was important to have a sliding scale for repeat offenders, including those who continued to attend house parties, and the sanction of a £10,000 fine for organisers of 'raves' should be retained. Officials would provide further advice on the application of FPNs.
266. Ministers confirmed the hospitality sector would re-open as planned but, with a limit of four persons meeting in a group.
267. The decisions were announced on 2 November 2020 and new Regulations were made, the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 ("the Post-Firebreak Regulations"). A full suite of impact assessments had been carried out in respect of the post-firebreak Regulations.
268. The firebreak ended on 9 November 2020. The firebreak was effective in reducing the transmission of Covid-19. In entering into this firebreak/circuit break in October/November, we had advice from TAC which suggested a 2 or 3 week duration. In the end we decided on a period of two weeks and three weekends. As I have explained above, we may well have considered a full 3 week period had the UK Government extended to Wales the financial support it would extend to England within a matter of weeks.
269. The Post Firebreak Regulations were reviewed at Cabinet on 16 November. It was decided to repeal the £10,000 fixed penalty notice for organising an unlawful music event; instead, alleged breaches would be subject to prosecution at court. I was copied into MA/FM/3803/20 which was a review of the post firebreak restrictions, exhibit **MEWL/01-128 – INQ000350010** refers. Following further discussion, I was of the view that we had the option of retaining the £10,000 fixed penalty notice which met the deterrent the police preferred, whilst being satisfied that our legitimate concerns for access to justice were also met. The FM agreed to maintain the option of the £10,000 fixed penalty notice, exhibit **MEWL/01-129 – INQ000350094** refers.
270. Cabinet also considered a paper outlining scenarios over the winter, which I exhibit as **MEWL/01-130 - INQ-000048996**. It considered a wide range of social and economic

harms, in addition to the direct harm likely to be caused by unchecked viral transmission. “Long Covid” was recognised in this paper as among the direct harms attributable to the virus. The paper recognised that there was considerable uncertainty as to the effect of the virus over the coming months. It envisaged four nations arrangements to permit some measure of family visiting over the Christmas period. Legal advice in support of this paper had been produced on 13 November, which I exhibit as **MEWL/01-131 - INQ-000048936**.

271. Cabinet next met on 19 November. I exhibit the minutes as **MEWL/01-132 – INQ000129889**. CMO(W) reported that early indications had suggested that the fire-break had contributed to a reduction in community transmission and, it appeared that the ‘R’ rate had fallen to around 0.8. There had been a small reduction in the number of people in hospital with Covid-19 symptoms, and there had been the slowest weekly growth in such patients for some-time. Hospitals were reporting trends of stabilisation and reduction. However, there was a concern that cases may begin to rise again in early December. That reinforced the need for a campaign to highlight the importance of behavioural change.

272. Cabinet noted those risks and, despite the possibility of vaccination and mass testing, it was recognised that Ministers may need to re-impose some restrictions to prevent NHS capacity from being overwhelmed. Ministers raised some concerns about re-introducing restrictions prior to Christmas, which could impact on public confidence and may result in less compliance. We could have considered a fire-break after Christmas but we were advised that this was likely to be less effective. It was also important to consider what action the UK Government and other Devolved Governments might take in the run up to the festive season. We agreed that it was difficult to take any early decisions on what action to take, as we would need to see the latest data on how the virus was spreading. Further data, and modelling, was sought.

273. The First Minister concluded the meeting by updating Cabinet as to the meeting he had had the previous day with the Chancellor of the Duchy of Lancaster and the First Ministers of Scotland and Northern Ireland to discuss a common approach to Covid-19 restrictions during the festive season.

274. Cabinet met again on 23 November and considered winter planning for Covid-19. I exhibit the minutes as **MEWL/01-133 – INQ000129860**. The First Minister advised Cabinet that there would be a need for a discussion on whether further restrictions

should be put in place in Wales in the coming weeks. A paper on NHS capacity, reflecting on the rise in cases, was shared.

275. We were advised that, having been in retreat for most of the month after the firebreak, cases of Covid-19 in Wales were increasing again. Consideration was being given to introducing a form of tier system (there were similar arrangements in England and Scotland) and a paper on these proposals would be circulated. I exhibit both the email circulating the paper and the paper as **MEWL/01-133a – INQ000376542** and **MEWL/01-133b – INQ000048896**. We also received an update on the Race Equality Action Plan, which was being taken forward by the Deputy Minister and Chief Whip. I understand that she has addressed this in her statement.

276. On 24 November 2020, UK-wide rules for Christmas were agreed. The joint statement is exhibited as **MEWL/01-134 – INQ000321231**. These included relaxing travel restrictions across the four nations and between tiers to provide a window for households to come together to celebrate Christmas. Over the next few days, it became clear that the pandemic was again growing in Wales. Over the course of Cabinet meetings on 26, 27, 29 and 30 November, Cabinet agreed that restrictions would need to be introduced in order to check transmission of the virus. We were provided with advice as to the effectiveness of Regulations in place in England and Scotland.

277. By the meeting on 27 November, the evidence showed a rise in the number of infections, which if left unchecked, would overwhelm an already stretched NHS. We balanced the different harms and agreed in principle on an approach which drew in part on the experience in Scotland. In summary we proposed introducing restrictions on hospitality businesses in order to reduce social mixing. Entertainment venues would close. In terms of visitor attractions, Cabinet agreed that all indoor areas should be closed on the basis they were associated with people gathering, but outdoor areas should remain open.

278. This approach would also include retail remaining open along with all close-contact services such as hairdressers. We agreed that gyms, swimming pools, leisure centres and spas, would remain open, given the benefits which they had for physical and mental health and wellbeing, but further discussion would need to take place in relation to exercise classes held indoors. In terms of holiday accommodation, it was agreed that the sector should remain open for people within Wales and only to a single household rather than for a bubble, until the industry could establish that sufficient checks could

be put in place to verify that those staying in the same place were part of the same bubble.

279. Finally, Cabinet agreed in principle that childcare, schools, HE and FE institutions should all remain open in the interests of children and young people.

280. Cabinet considered that a national approach would be easier to understand and would have more public support and so the measures introduced should apply nationally across Wales notwithstanding the incidence of the virus in any particular area, which was in accordance with CMO (W)'s advice. We had also concluded from the local lockdowns that a national approach was likely to be more effective.

Alert Levels and Christmas Restrictions

281. Cabinet met again on 29 November to determine the restrictions that would be in place. I exhibit the minutes as **MEWL/01-135 – INQ000048930**. We were provided with further technical advice as well as legal advice, an equality impact assessment and children's rights impact assessment (copies of which have already been provided to the Inquiry). The CMO(W) confirmed that the epidemiological trend was that infection was continuing in an upwards trajectory. The critical care bed situation was currently stable at 58 beds in use, but it was expected that the relaxations around Christmas would only increase the burden on the NHS. The new national measures were to be introduced with effect from 6pm on 4 December 2020, and the Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020, were made to modify the post-firebreak regulations accordingly. Cabinet agreed that the restrictions should be reviewed on 17 December and every three weeks following.

282. The Cabinet also considered proposals relating to the Christmas period, including the partial relaxation of travel restrictions and a liberalisation of the extended households regime for the festive period. Cabinet agreed that for the Christmas period only, people in flat or house shares should be allowed to form a different Christmas bubble from other people in their one home.

283. Cabinet then met again on 2 December to consider travel restrictions and a proposed traffic light model for restrictions.

284. As to the travel restrictions, the legal basis upon which restrictions were imposed were only exercisable in respect of Wales and not other parts of the UK. In advice that I had approved, Legal Services advised that preventing people in Wales from travelling to low prevalence areas in the rest of the UK may not be an appropriate use of these powers and was likely to be open to challenge, unless it could be specifically justified as addressing health risks specific to Wales. Therefore, Cabinet agreed to restrict travel to and from areas at the equivalent to Tier 3 in England and Level 3 and above in Scotland and to seek to reduce, through advice in guidance, travel to and from Tier 2 / Level 2 regions or lower because of the risk of seeding the virus in those areas.

285. The First Legislative Counsel had addressed Cabinet on 27 November, noting that because a great many sets of Regulations had been required, there was now a risk of potential confusion for the public. He suggested that a single regulatory system could be provided to allow Wales to move between Tiers on a national, regional, and local level, as in Scotland. This approach could be a simpler, more efficient approach to the implementation of varying restrictions across Wales. The proposals, as exhibited in **MEWL/01-135a – INQ000048904** followed from this presentation. The proposals set out a framework for escalating or de-escalating the policy response based on various indicators. Ministers accepted that, given the epidemiology of the virus, escalation would generally need to be a lot quicker than the de-escalation process. It was noted that the criteria for moving between levels would need to be carefully considered and some level of detail would need to be made public alongside the Regulations.

286. Cabinet agreed that officials should continue to develop proposals for the traffic light models and the Regulations that would underpin them.

287. The first vaccine was authorised for use on 2 December 2020. The vaccine roll-out began in Wales on 8 December.

288. A TAG paper on the effect of non-pharmaceutical interventions in the pre-Christmas period was circulated on 5 December 2020, which I exhibit as **MEWL/01-136 - INQ000350049**. Cabinet met again on 7 December; I exhibit the minutes as **MEWL/01-137 - INQ000129910**. The First Minister informed Cabinet that an early draft paper would be shared later that evening on Covid-19 alert levels to enable Ministers to have an initial discussion at the 9am call the following morning, ahead of a formal Cabinet meeting on Wednesday to consider the proposals. It was noted that Wales was the only part of the UK where cases of Covid-19 were increasing. We met again on 9

December to consider the further restrictions which may need to be put in place over the coming weeks, and specifically after Christmas, to help control the spread of the virus. CMO(W) provided an update confirming that cases were continuing to rise, with over 2,000 new infections being reported the previous day. There were now around 345 cases within every 100,000 of the population in Wales. In Scotland the rate was just over 100 in 100,000 and in England around 150 in 100,000. It would be important for people to limit social mixing in the period before Christmas. I exhibit the minutes as **MEWL/01-138 – INQ000048793**.

289. We also adopted a new traffic light system for Wales, which involved four Alert Levels. We agreed in principle to move to Level Four restrictions from 28 December. This decision had to be made public as soon as possible to provide the public and business with time to prepare. We agreed to meet again the following afternoon to finalise arrangements, after Ministers had been able to discuss potential Level Four restrictions with stakeholders.

290. Cabinet reconvened again on 10 December. I exhibit the minutes as **MEWL/01-139 – INQ000048794**. With the infection rate continuing to rise it had been announced that schools and colleges would move to online learning from Monday 14 December. I understand that this decision has been addressed by the Minister for Education in her statement. Cabinet was told that the Shadow Social Partnership Council and the Trades Unions were supportive of the Government's proposals to enter into Alert Level Four should the situation not improve before Christmas. There also appeared to be general support across many sectors, if it was possible to move away from a national approach in future, for that to be a regional approach to restrictions rather than an approach based on local authority areas. Cabinet was told that the retail sector had requested clear guidance on the sale of non-essential goods in stores. The hospitality and culture sectors appeared to be supportive of the proposed restrictions. The Police and Crime Commissioners and the police were supportive of the current proposals to curb the sale of alcohol, but they were concerned about peoples' behaviour over New-Year's Eve.

291. It was agreed that the messaging, which would follow the First Minister's press conference, would need to be hard hitting, while making it clear that if there was no significant improvement in the transmission of the virus by 22 December then these restrictions would need to be implemented from 28 December. There was specific messaging targeted at supporting children and young people.

292. An updated Coronavirus Control Plan was published on 14 December 2020, which I exhibit as **MEWL/01-140 – INQ000227576**. This set out the new approach based on four Alert Levels, aligned with the measures which would be put in place to control the spread of the virus and protect people's health. Impact assessments for the Alert Levels were produced and published on 21 December and 15 January 2021 and are exhibited as **MEWL/01-141 – INQ000087128** and **MEWL/01-142 – INQ000087127**.

293. We were advised that the public health position was worsening. The CMO advised a move to Alert Level 4 and a change to the planned Christmas easing of restrictions. We had Ministerial calls to discuss this on the evening of 15 December, on 16 December 2020 and 17 December 2020. Example of these calls are exhibited as **MEWL/01-143 – INQ000350127** and **MEWL/01-144 – INQ000350128**.

294. On 16 December 2020, the First Minister announced that Wales would move to Alert Level 4 (the highest level) from 28 December and that certain businesses would close at the end of trading on Christmas Eve, with hospitality premises closing from 6pm on Christmas Day. We advised that Christmas mixing should be limited to two households, which I exhibit as **MEWL-01-145 – INQ000350577**. A joint statement was issued with the UK Government and the Scottish Government on the approach to staying safe at Christmas. The statement is exhibited as **MEWL/01-146 – INQ000350120**.

295. We had to decide whether our position that the Christmas bubble should be two households only, rather than three, would remain guidance or would form part of the Regulations. We discussed this extensively, but there remained some difference of opinion on this. From memory, the different perspectives were that setting out the position in guidance would be broadly consistent with the approach taken in other parts of the United Kingdom (and some weight had been given to seeking to maintain as common a position over the festive period as possible). The alternative view was that changing the Regulations would be a clear signal of the importance of compliance with the new restrictions. As the Cabinet hadn't reached a clear view, and in view of the need to make the decision urgently, the First Minister decided that the change would be made in Regulations. I agreed with this approach.

296. On 18 December 2020, the First Minister made the Health Protection (Coronavirus Restrictions) (No 5) (Wales) Regulations 2020, which came into force that evening. These Regulations contained the new Alert Levels, and the restrictions that applied at each Alert Level. The Regulations consolidated requirements to isolate, and

requirements to take preventative measures in regulated premises to minimise risk of exposure to coronavirus. They also contained Regulations on the requirement for face coverings and exemptions from this requirement, and Regulations about the provision of education in school. The Regulations also set out provisions reducing the number of households in a Christmas bubble (from three households to two, although single adult households were still permitted to join these bubbles), The Regulations also contained the provisions about enforcement and offences. These became the new Principal Regulations.

297. Also on 18 December 2020, the MHSS circulated the latest TAG modelling paper, which indicated that we were in a period of exponential growth. I exhibit the TAG modelling paper as **MEWL/01-147 – INQ000321023**. The recommendation was to remove the Christmas relaxation policy and move to Alert Level 4 restrictions as soon as practically possible. Cabinet met on Saturday 19 December 2020, when we had an urgent discussion about this, including discussions about a new strain of the coronavirus. The minutes are exhibited as **MEWL/01-148 – INQ00048803**. The First Minister provided an update on his meeting with the Chancellor of the Duchy of Lancaster and the First Ministers of Scotland and Northern Ireland, along with the Chief Medical Officer and Chief Scientific Adviser for England, earlier that day, when information had been shared about the new strain, which was more transmissible. The Prime Minister announced, later that afternoon, significant new restrictions to control Covid-19 in London, Kent, Essex and the East of England, and changes to arrangements over the Christmas period for the rest of England.

298. The Deputy CMO (W) provided advice in respect of the new strain of the virus and the impact this would have on the NHS in Wales. While the case rate per 100,000 population for the UK was around 250 per 100k, London was at 450 cases, which had doubled in one week. Cases were rising fastest in younger age groups, 10-14 and 15-19, and this was beginning to manifest in growing rates for the over 60s. This rapid growth was driven by the new mutation of the virus. PHW confirmed early, but robust, evidence suggested the new strain was substantially more transmissible. In Wales there was high and increasing incidence in almost all areas. It was reported that hospital admissions were running ahead of the RWC and there was significant pressure on the social care sector. The NHS was concerned about resilience with pressure expected to increase into the new year. The Welsh Ambulance Service was already experiencing issues.

299. Given that the mutated virus was present in all parts of Wales, there were concerns about the current travel arrangements, which would enable large numbers of people to continue to move around the UK at Christmas. In addition, household mixing would drive the spread of the virus and increase incidence in January.

300. Cabinet weighed the socio-economic harms of acting against the direct public health harms and harms associated with increased pressure on the NHS of not acting. This was a decision which I recall weighed very heavily indeed on Ministers given the timing of the decision in the days before Christmas, and the impact on the public after what had obviously been an incredibly hard year for people. We agreed that whilst we should avoid all but essential disruption to businesses and to families' plans for Christmas, the Government's overriding duty was to protect lives in Wales. We decided to move to Alert Level 4 restrictions from midnight that night, instead of from 28 December. This amounted to a lockdown similar to that imposed in March 2020. I agreed with this course of action given the advice we had received and the rapidly worsening public health context we were facing. We just could not expose people to the risk of this new, more virulent, form of the virus without taking measures to mitigate it, and regulatory change made the position clearer to the public.

301. These new restrictions required non-essential retail, close contact services, gyms and leisure centres, hospitality and accommodation to close at the end of trading. Stay-at-home restrictions also came into effect from midnight. Those in holiday accommodation in Wales had to make arrangements to leave and return home at the earliest opportunity. The Christmas relaxation, which would allow two households to come together to form a Christmas bubble, now applied only on Christmas Day. The First Minister made an announcement about those changes that afternoon, and the new Principal Regulations were amended. These additional restrictions applied across the whole of Wales, whereas the UK Government had only imposed additional restrictions in London and the south east of England, with guidance issued to the rest of the country.

302. Cabinet met again on 29 December. The minutes are exhibited as **MEWL/01-149 – INQ000129908**. The Minister for Health and Social Services provided an update on the Covid-19 situation noting that there appeared to be some levelling off in the all-Wales transmission rates, albeit that the rates were still continuing to rise in North Wales. The new variant had been identified as a factor in the rapid growth in the number of cases, which was a real threat to the NHS in Wales and its ability to respond. Critical care was

under the greatest pressure and had seen the number of Covid-19 patients increase by 24% since 21 December, and was likely to increase over the next two weeks.

303. The Oxford AstraZeneca vaccine was expected to be approved by the Medicines and Healthcare Products Regulatory Agency later that week, with the roll-out across Wales expected to start the following week.

304. The Christmas lockdown was one of the most challenging decisions, given that it took place so close to Christmas itself. I think it was certainly the correct approach to try to coordinate with the other Governments given that people have families in all parts of the United Kingdom and it is a time when people travel to spend time with one another. We very much wanted families and friends to be together. To my mind this was important in recognition both of the awful impact on people's wellbeing of the year we had had, but also because we knew further restrictions would be needed in the weeks ahead and we worried that people would be less likely to tolerate those if they had not had at least some respite over the holiday period. However, the speed at which new information was becoming available about the increased transmissibility of the new variant, compelled us to change our plans very quickly. I recall us discussing the impact on some people who would have had to wait until just before the break for their Christmas payslip in order to afford to buy gifts, and it felt particularly unfair on them to close down most of the retail sector before they may have had a chance to do that. But the advice was clear and we needed to act urgently to keep people safe. We were shortly to see greater restrictions imposed in the south east of England of course for similar reasons.

Restrictions in 2021

305. The situation became even worse over the next few days at the start of January 2021. On 4 January 2021, after receiving advice from the Joint Biosecurity Centre, the four CMOs recommended that the UK Alert level should move from level 4 to level 5. This meant that there is a material risk of healthcare services being overwhelmed. (I should make clear that this was a separate alert system to that which the Welsh Government had set out in December; the joint CMOs' alert level related to transmission rates alone, whereas the Welsh Government's alert levels were a suite of NPIs).

306. Cabinet then met on 6 and 7 January 2021 to undertake its 21 day review. The minutes are exhibited as **MEWL/01-150 – INQ000057757**. The same process was followed as had been agreed previously, and the advice/evidence was presented and considered.

The CMO(W) provide the latest advice in respect of the transmission of the virus and the impact on the NHS. He confirmed that cases of Covid-19 were very high in most parts of Wales and the seven day average was around 470 in every 100,000 of the population. There were rapid increases in north east Wales, largely due to the new variant of the virus. Symptoms did not appear to be more serious, but the increased risk came from the fact this strain was more infectious.

307. The data for infection rates and the new-year period was unclear due to reporting issues and the reduction in testing over the public holidays, but it was hoped that information on the impact of the Alert Level 4 restrictions in Wales would be available by the end of the following week.

308. Even with the Level 4 restrictions the new strain appeared to be driving an increase in cases across the whole of the UK, which, we were given to understand, was why the four CMOs had raised the risk level to the highest possible. We were advised that the NHS in Wales was under real pressure, as the number of people being admitted to hospital had continued to rise for the past two weeks, with almost 2,800 patients with Covid-19 symptoms occupying beds.

309. The CMO(W)'s paper recommended that the Alert Level 4 Restrictions should be maintained across the whole of Wales for another three weeks. Cabinet agreed with that proposal together with a need to tighten restrictions: for example, it was to be made explicit that showrooms were classed as non-essential retail and should close. We agreed that these additional restrictions should be applied to the whole of Wales given the severity of the threat and not on a regional basis.

310. No proposals were made at this time to introduce further restrictions for childcare or places of worship but we understood that further advice was being prepared. We were very conscious that any changes to childcare arrangements would have a disproportionate impact on the poorest of families, on women in particular, and could also have implications for certain sectors, such as essential retail, health and social care. Cabinet agreed that the advice would need to include equality and children's rights impact assessments and consider how to make provision for vulnerable children and the children of key workers.

311. On 7 January Cabinet reconvened on a Ministerial call to consider a paper from TAC and to discuss the alignment of the school and college closures with the review of the

Regulations. In light of the analysis in the paper that reopening schools was unlikely to enable us to reduce transmission sufficiently quickly, our view was that we should signal that it was unlikely that normal face to face schooling would return before half term in mid-February unless there was a significant improvement in the 'R' rate.

312. It was agreed that officials, Legal Services and OLC would advise on whether a new 'Alert Level 5' could be devised within the new system which the Cabinet had approved. Cabinet then met again on 11 January where the First Minister presented a paper on Covid-19 – Options to Amend Restrictions CAB(20-21)58, which reflected that advice.

313. The CMO(W)'s view at that meeting was that there had been a slight overall reduction in transmission rates across Wales but there was still some uncertainty surrounding the spread of the new variant and cases could increase again. Mortality rates were still high, but it was accepted that there was a lag in data due to the time people spent in hospital with symptoms. He told us he felt it was still very important to push the messaging that people needed to remain at home. The main challenges were to get people vaccinated as quickly as possible and ensure they understood the continued risks of transmitting the virus. Cabinet noted that Trades Unions, business leaders and others had been calling for the Regulations to include a specific requirement on all businesses and premises to undertake a Covid-19 risk assessment. Notwithstanding the potential duplication of existing Health and Safety legislation, Cabinet agreed that those specific requirements should appear in the Coronavirus Regulations so that businesses' obligations would be as clear as possible.

314. Cabinet discussed 'click and collect' services and agreed the guidance should be revisited and that there should be discussions with the retail sector to ensure risk assessments took into account the relevant protocols to minimise contact and time spent in stores. We agreed that we would consider this further at the next review.

315. Finally, the First Minister referred to the Data Monitor, which was regularly circulated for Cabinet to note, and asked Ministers to indicate whether there were any areas that provided valuable information and should be kept or whether there were some elements that were no longer required and could be discontinued, mindful that we wanted to ensure that the data presented was as useful as possible in supporting our decision making.

316. Cabinet next met on 25 January to undertake its 21-day review, the minutes are exhibited as **MEWL-01-151 – INQ000129912**. Community transmission rates across Wales had fallen since 8 January and the seven day average was around 228 in every 100,000 of the population. In terms of hospital capacity, the Chief Executive of the NHS reported that there were 2,700 confirmed, suspected or recovering Covid-19 patients occupying beds. Of those there were 1,400 confirmed cases. Those figures were within the planning scenario. These exceptional circumstances were becoming normalised within the NHS and hospitals were being flexible to help manage the extraordinary number of additional patients. We agreed that as indicators remained high across Wales and the capacity of the NHS remained a matter of concern the country should remain at Alert Level 4 until the next review on 18 February. Cabinet confirmed that schools should remain closed until 22 February 2021, and agreed that any headroom available in the next review period should be used to prioritise making available more face to face education. The minutes record that all Ministers welcomed the availability of equalities impact assessment, (which I exhibit as **MEWL/01-152 – INQ000129917**) and the children's rights impact assessment papers (which is exhibited as **MEWL/01-153 – INQ000129918**) and noted the deepening inequality issues that had been laid bare by the pandemic, which would need to be addressed throughout the ongoing recovery work.

317. On 26 January 2021 the First Minister attended a call with the Chancellor of the Duchy of Lancaster to discuss travel restrictions and the CTA. The Cabinet had received a paper on the various options open to us on the day before, from the perspective of legal rationality. I agreed to share the legal advice that had been provided to the Welsh Ministers on this issue with the UK Government.

318. On 26 January 2021, we had a Cabinet discussion about our approach to interventions in light of the availability of the vaccine and vaccine programmes. This was an introductory discussion which would continue over coming months. The intention was that it would underpin the approach to decisions that would be needed in respect of restrictions. I presented two papers, which included a set of questions and considerations in relation to restrictions.

319. The first document was "A note to guide the discussion", which I exhibit as **MEWL/01-154 – INQ000350259**. That Note identified the following by way of introduction:

There are several types of harm which we need to weigh in the process of evaluating restrictions.

- (1) Sustaining hospital services and preventing them from being overwhelmed has been a principal objective, with the consideration of other harms being weighed against that.*
- (2) The imposition of restrictions is a serious limitation of civil liberties and requires continuous justification. Major developments, such as a vaccine, would be an appropriate point to re-evaluate the rationale.*

320. It then raised a number of questions for ministers to consider. There was a further document entitled "Doc 10: Questions on the impacts of vaccine rollout on alert levels framework." That noted that, though there were still many unknowns in respect of the vaccination program, that *"The impact of vaccinations, however, will begin to shift the considerations in relation to the balance of harms. As more vulnerable people are vaccinated and build immunity we would expect to see hospitalisations, pressure on the NHS and deaths fall. NHS pressures may become less directly linked to confirmed cases."*

321. The paper sought views from Cabinet in order to steer further work in respect of decisions around NPIs. The restrictions obviously placed a series of severe constraints on the public's liberties. Given the public health risks, it was important to keep in mind that the restrictions themselves need to be justified, and so we had to continuously question and challenge whether they remained necessary and proportionate. Sustaining hospital services and preventing them from being overwhelmed had been a principal objective, with the consideration of other harms being weighed against that. The rollout of the vaccine would require us to revisit this priority.

322. I presented three key areas of discussion:

- a) Would a higher tolerance of community transmission be acceptable in a scenario where community transmission at a given level leads to fewer people being very sick and requiring hospital admission as a result of the vaccine?
- b) What approach should be taken with those that choose not to be vaccinated?
- c) At what time should these discussions turn in to decision making?

323. In respect of the first point there was general agreement at that time that where the vaccine had reduced the seriousness of the impact of the disease on vaccinated individuals and thus reduced pressure on the NHS, a higher tolerance of community transmission seemed acceptable. Ministers noted that willingness to comply with

restrictions would diminish if there was no evidence the NHS was under high levels of pressure. There was further a concern that a new approach might be needed, where some limited restrictions would continue to be necessary over a sustained period, to allow scope for more normality in other areas (e.g. the wearing of face coverings in supermarkets for a longer period might be an example). This might require employers to take approaches specific to their workplaces as national restrictions eased.

324. It was clear that equality impact assessments would continue to need to be considered carefully, given our clear understanding that Covid-19 and lockdown restrictions have a disproportionately adverse effect on some communities. The First Minister indicated that the discussion on these questions would continue in the coming weeks and would be returned to at a future meeting.

325. On 27 January 2021, I was copied into MA/FM/0388/21, which recommended that the First Minister inform the Attorney-General that the Welsh Ministers did not intend for the Single Justice Procedure to apply to prosecutions for alleged breaches of the Welsh coronavirus Regulations. This issue arose because the Attorney General (Rt Hon Suella Braverman MP) had at some point on or before 19 January 2021, instructed her officials to make provision for the Single Justice Procedure to apply to prosecutions under coronavirus Regulations in England and Wales. Similar provision had been made earlier in the pandemic but had lapsed. On 25 January, UK government officials contacted Welsh Government officials in order to ascertain whether the Welsh Government intended that prosecutions under the various Welsh Regulations would take place by the SJP. This was at least six days after I understand the Attorney General first decided to prepare an SI on this subject and, we were later to learn, many months after the issue had first been considered.

326. Welsh Government officials prepared MA/FM/0388/21, which I exhibit as **MEWL/01-155 – INQ000350203**, which advised against including the Welsh Regulations within the Attorney's proposal. This MA noted that while the police were in favour of using the SJP, there was anecdotal evidence that some convictions obtained following use of the SJP were potentially unreliable. The MA cited media reporting where individuals received convictions for conduct which was not an offence at the time in question, where police had mistaken guidance for law, of fines which exceeded the statutory maximum, and of shortcomings in case preparation including an absence of signed witness statements from the police. There had even, the MA noted, been cases where people had been convicted under the SJP in England, for conduct in England, under the Welsh

Regulations. In part because of the short notice given for this decision, but also because of the nature of the current devolution settlement, there was insufficient evidence on which to form a concluded view on the merits of this decision.

327. On 27 January, the First Minister's office asked for my views on the issue. Having considered the matter, I responded on 29 January 2021 that on balance, I agreed that the evidence available to us did not show a need to diverge from the ordinary court process for these offences. The First Minister and DMCW also agreed with the advice. We had not seen, at that point, an evidenced request from either the police or the court service that supported the proposition that recourse to the SJP was required. Welsh Government officials therefore informed their Whitehall counterparts that the Welsh Ministers did not see the case for invoking the SJP for Welsh coronavirus prosecutions.

328. Nevertheless, on 8 February 2021, the First Minister received a letter from the Lord Chancellor and the Attorney General, informing him that the SJP would be adopted for offences under the Welsh Regulations. I considered this to have been an extraordinary letter; having asked for the Welsh Government's opinion on the issue and having received a reasoned response, the UK Government has simply proceeded regardless. I acknowledge that the letter did provide some further reasoning in support of their decision, but it would have been appropriate for that to have been shared with the Welsh Government in advance of the decision. This response exemplified a shortcoming in the current devolution settlement in that the Senedd and (through secondary legislation) the Welsh Government can create criminal offences relating to non-reserved matters but cannot fully superintend the means by which they are enforced by prosecution. On 9 February the Attorney signed the Prosecution of Offences Act 1985 (Specified Proceedings) (Coronavirus) (Amendment) Order 2021, which added offences against the Welsh coronavirus Regulations to the Schedule of offences for which the SJP might be used.

329. On 16 February I received further advice from James Gerard, which I exhibit as **MEWL/01-156 - INQ000350282**. I agreed this advice. While it could have been possible to circumvent the Attorney's decision by withdrawing from the police in Wales their authorisation to prosecute these offences (leaving all prosecutions in the hands of the CPS), this step could have given the public the wrong impression that Ministers did not trust the police in Wales to enforce breaches of the Covid-19 rules. Accordingly, I agreed that the Welsh Government should allow prosecutions to take place under the

SJP, but that we should make clear it that we disapproved of the way in which this decision had been made. The First Minister also agreed, and wrote to the Lord Chancellor and the Attorney on 2 March 2021 to register the Welsh Government's disapproval of the way this issue had been handled: I exhibit the letter as **MEWL-01-157–INQ000350632**.

330. Cabinet continued meeting regularly, including to conduct the 21 day reviews on 16 /17 February, 8/9 March, 29/30 March 2021 and 19 April 2021. We continued to receive advice from the CMO, the CSAH, and from TAG/TAC, and lifted restrictions gradually in light of the public health situation at the time of each review.

331. On 19 February 2021, the Welsh Government published an update to our Coronavirus Control plan: alert levels in Wales (coming out of lockdown), which is exhibited as **MEWL/01-158 – INQ000350284**. This set out our understanding of the impact of the new variants, the systems in place to respond to the current challenges, and our approach to coming out of lockdown.

332. The public health position was slowly improving across Wales, as vaccine roll out increased. There was a note of caution, however, as the new variants had created uncertainty about how swiftly cases may rise if restrictions were lifted too quickly, and as such, the Scientific Pandemic Influenza Group on Modelling was recommending a slower relaxation of the lockdown measures.

333. Restrictions were gradually removed over time:

- 1) On 19 February 2021, Cabinet agreed that the stay at home lockdown measures under Alert Level 4 should remain in place. However, should conditions continue to improve by the next review, it may be possible to begin moving out of the 'stay at home' restrictions. Some minor amendments were made to Regulations and guidance. It was agreed that the support bubble arrangements should be expanded to include additional groups, such as offering additional support to people with disabilities.

- 2) On 8/9 March 2021, we agreed to take the first steps out of lockdown, as the public health situation in Wales was continuing to improve. From 15 March 2021, all primary school children and years 11 and 13 (being exam years) returned to school. Some in years 10 and 12 could return, and years 7-9 would

have the opportunity to “check in” for support for well-being, ready to return after the Easter holidays. “Stay at home” restrictions were replaced with “Stay local” rules, and the guidance that was in place in June 2020 was reintroduced. People were permitted to meet in gardens and private outdoor spaces within the gathering rules from the same date. This would be limited to four adults from two households.

- 3) An updated Coronavirus Control Plan was published on 19 March 2021, which set out the pathway to relaxing the restrictions, taking into account the vaccine programme and the Kent variant. Plans were set out to move from Alert level 4 to Alert level 3 by 22 April 2021.
- 4) From 15 March 2021, hairdressers and barbers were permitted to open, and non-essential retailers were able to sell items from 22 March 2021.
- 5) From 27 March 2021, the stay local restrictions were lifted. Self contained accommodation and libraries re-opened, outdoor children’s activities were permitted, and six people from households could meet outside.
- 6) On 31 March 2021, it was announced that restrictions would be eased by mid May to move Wales into alert level 3 (subject to public health evidence).
- 7) On 1 April 2021, shielding measures were paused.
- 8) On 12 April 2021, all children and students returned to face to face education after the Easter holidays, all non-essential retail reopened, and travel was allowed out of Wales into the rest of the UK.
- 9) As the public health situation continued to improve, easements were brought forward. On 26 April 2021, organised outdoor activities and outdoor wedding receptions were permitted. Any six people were able to meet outdoors.
- 10) From 3 May 2021, gyms and leisure centres reopened, and extended households were allowed again.

334. On 3 May 2021, Wales moved to Alert Level 3. Incidence rates in Wales had dropped below 12 per 100,000. Good progress was being made with the vaccine programme.

335. Ministerial colleagues and officials were far more directly involved in addressing long Covid than I was, and I understand that they have provided detail as to the Welsh Government's approach to long Covid in their statements. Long Covid was discussed at Cabinet, and it was recognised as one of the harms caused by the virus in Cabinet decisions from the Autumn of 2020 onward. On 19 January 2021 Fliss Benée, who co-chaired TAG at the time, gave an update to Cabinet (during a Ministerial call) on the scientific evidence as it stood at that time, and noted that further research and evidence-gathering work was ongoing in relation to the effect of long Covid.

Reflections and Lessons Learned during my time as Counsel General

336. In reflecting on how we approached decisions in response to the pandemic during my tenure as Counsel General, I have the following observations.

337. I think that the structures and processes in place to support decision making generally enabled decisions to be taken effectively. Cabinet met frequently, either formally or in Ministerial calls. Cabinet papers or oral briefings included advice on transmission, the impact on the NHS, and the effects of restrictions to the extent these were known. We had regular access to a data monitor. Decisions were rooted in the discussions of the Cabinet, other than in the most exceptional of circumstances.

338. If we were ever to face a similar challenge again in future, I would want us to establish an earlier pattern of formal impact assessments (both equality and children's rights impact assessments, as well as socio-economic impact assessments under the new socio-economic duty). However, I think the need to act under extreme time pressure in the early stages of the pandemic is an important context. I would stress that this Cabinet was one where consideration of the disproportionate impacts of policy on disadvantaged groups was a consistent theme in our discussions. Additionally, there was ongoing engagement with stakeholders and representative bodies from the outset which enabled us to apply this important lens to the decisions, often in real time.

339. I think we established an effective process for considering the Regulations and developed a consistent rhythm once we had undertaken the first reviews. I was confident that the Cabinet discussions were supported by robust legal advice

throughout and that our MA process ensured legal advice for key decisions. There were one or two occasions when I felt lawyers ought to have been engaged sooner in discussions (for example in the first week or two I recall there was an instance of lawyers not seeing draft guidance sufficiently early to provide legal clearance in good time, though this was in fact resolved in a way which enabled them to do so), and there was an occasion in relation to the initial closure of schools, where I felt that it would have been helpful to have involved lawyers. I recall raising the need for timely engagement of lawyers with officials and periodically would remind Cabinet colleagues of the importance of this. Also, with hindsight I would have preferred to have been brought in personally as Law Officer sooner into the very early discussions on potential restrictions. However, I am absolutely clear that those making those early decisions were able to draw on solid public law advice from trusted senior lawyers, with whom they had well-established relationships.

340. I did not have concerns at any point regarding the performance of the First Minister, any of my Ministerial colleagues, nor any senior official or special adviser. I was not aware at any time of any concerns regarding my performance as Counsel General. Despite the difficult context in which we were working, and the decisions we were having to take, I did not consider resigning from my role at any time.

341. I have set out my views on the timeliness and effectiveness of the core decisions we took above.

342. I was aware of allegations of breaches of social restriction and lockdown rules by the then Prime Minister's Special Adviser, Dominic Cummings and by the then Secretary of State for Health and Social Care, Matt Hancock. In my view, these breaches were egregious and did undermine public confidence and maintenance of observance of these rules by the public. The public has a fair expectation that those in positions of power would abide by the same rules as them. If senior Ministers and advisers are not following the very rules that they have said are essential to protect the NHS and save lives, that inevitably leads the public to question why they should abide by those same rules.

343. I recall seeing a story in The Sun on 12 May 2020, alleging that the MHSS had been seen eating chips with his family in Cardiff Bay over the bank holiday weekend. I do not recall being asked to advise on whether the MHSS had breached the Regulations then in place. The Welsh Government's guidance on exercising outdoors was updated on

11 May 2020. I understand that the timing of changes to the guidance has been addressed by Andrew Goodall and I do not repeat that here. In short, decisions had already been made to change this Guidance before the article was published and the changes had nothing to do with this press coverage. In my view, this incident did not have any impact on public confidence or the Welsh public's observance of lockdown rules.

344.. During my time as Counsel General, I appeared before Senedd Committees on a number of occasions to discuss Covid-19 related matters. A list of my attendances during the specified period is shown below, together with transcripts of my evidence:

02/06/2020	External Affairs and Additional Legislation Committee	MEWL/01-159-INQ000338658
15/06/2020	Legislation and Justice Committee	MEWL/01-159a-INQ000338659
23/06/2020	Public Administration and Constitutional Affairs Committee of the House of Commons	MEWL/01-159b-INQ000338705
03/07/2020	FM Scrutiny Committee	MEWL/01-159c-INQ000338660
14/07/2020	External Affairs and Additional Legislation Committee	MEWL/01-159d-INQ000338661
17/09/2020	External Affairs and Additional Legislation Committee	MEWL/01-159e-INQ000338662
21/09/2020	Legislation and Justice Committee	MEWL/01-159f-INQ000338663
12/10/2020	Legislation and Justice Committee	MEWL/01-159g-INQ000338664
22/10/2020	Scrutiny Committee	MEWL/01-159h-INQ000338665
02/11/2020	Legislation and Justice Committee	MEWL/01-159i-INQ000338666
05/11/2020	External Affairs and Additional Legislation Committee	MEWL/01-159j-INQ000338667
10/11/2020	House of Lords, Common Frameworks Scrutiny Committee	MEWL/01-159k-INQ000338871
14/12/2020	Legislation and Justice Committee	MEWL/01-159l-INQ000338668
11/01/2021	External Affairs and Additional Legislation Committee	MEWL/01-159m-INQ000338669
22/02/2021	External Affairs and Additional Legislation Committee	MEWL/01-159n-INQ000338670
01/03/2021	Legislation and Justice Committee	MEWL/01-159o-INQ000338671

I also appeared before the UK Parliament to discuss Covid-19 on 23 June 2020. I have already exhibited a transcript of my evidence above.

The Senedd Elections on 6 May 2021: Decision making from May 2021 to May 2022

345. I turn now to address the period after the 2021 Senedd Elections.

346. The Senedd elections were held on 6 May 2021. As I explained above, I was re-elected. Welsh Labour now held 30 seats in the Senedd and was once again the largest party. Mark Drakeford was re-appointed as First Minister. I was appointed as the Minister for Education and Welsh Language on 13 May 2021. The first Cabinet of the new administration was held on 17 May 2021, and it was confirmed that normal Cabinet meetings would be on a Monday afternoon with a ministerial call on Thursday morning.

347. My new ministerial responsibilities are exhibited as **MEWL/01-160 - INQ000066141** and included:

- i. School governance, organisation and admissions;
- ii. School standards, improvement and pupil attainment, including National Categorisation;
- iii. Funding of schools;
- iv. Foundation Phase;
- v. Additional learning needs;
- vi. Safeguarding;
- vii. Qualifications Wales;
- viii. Teachers' Pay and Conditions;
- ix. Further Education;
- x. FE student support;
- xi. Adult community learning;
- xii. Credit and Qualifications Framework including vocation, key and essential skills;
- xiii. Higher Education policy, strategy and funding;

xiv. Tertiary Education;

xv. International learning and strategy, including the International Learning Exchange Programme and Global Wales.

348. I understand that my predecessor as Minister for Education (Kirsty Williams) has explained how education has been devolved in Wales since 1999 and has outlined the nature of the Welsh Ministers' powers and duties in the education sphere.

349. In addition to my role as Minister for Education, I am also the Minister for Welsh Language.

Structures and bodies involved in the Welsh Government's emergency response to the pandemic

350. After the election, Cabinet continued to be the main decision maker in relation to NPIs, and decisions were usually taken as part of the 21-day review cycle that I have described previously. I remained a member of the Cabinet, and the principle of collective decision-making applied. We continued to reach decisions by consensus. I cannot remember an occasion after the election when we in the Cabinet did not reach a clear view on the decisions to be taken. The new Government very much remained committed to ensuring that children and young people were receiving face to face education and were attending education settings as long as it was safe to do so. Our position continued to be that schools would be the last to close and the first to open.

351. We were always considering the balance of harms. For most children and young people, the risk of becoming seriously ill from Covid-19 was thankfully low. The harm from not being in education was high: lowering educational attainment, the risk to vulnerable children who depended on schools to safeguard their welfare, and the reliance on free school meals for a significant part of the school population. Initially, the operation of NPIs was causing a lot of pupil absence (if one child in the year group tested positive, the whole year group would have to self isolate). As the public health position improved, we moved to having a more localised approach, enabling individual education settings to make risk based decisions based on local circumstances.

352. We continued to ensure that equality considerations were at the forefront of decision making. Often, when it came to the 21-day review, which was well-established when I became Minister for Education and Welsh Language, there were a series of papers

before Cabinet which included impact assessments – including a health and socio-economic assessment, which highlighted any equality impacts of decisions.

353. During my time as Minister for Education and Welsh Language, the focus was on easing restrictions when it was safe to do so and allowing decisions to be taken at a more local level in light of circumstances in schools, colleges and universities when appropriate. Generally, we were moving down the national Alert Levels, reflecting the scientific and medical advice and the requirements in the decision-making framework. The vaccination programme was in full swing and whilst the numbers did not only go one way, the context was different from the preceding year or so.

354. In relation to education, in this period, the majority of decisions about NPIs in schools and other educational settings were taken by me. Officials prepared a MA, which would be quality assured by the relevant Deputy Director within the Education Directorate. This would then be submitted to me for consideration, and ultimate decision. Sometimes the impetus for a MA came from me and at other times officials would submit an MA for a decision.

355. In some instances, the decision to be taken might cut across portfolios and needed to be considered by several Ministers. That is the case for some of the decisions I have set out below. Where this was the case, each Minister would consider the advice and give their opinion. This was usually staggered. During the period May 2021 – May 2022, there were a number of issues which I considered in conjunction with the First Minister and the Minister for Health and Social Services. Decisions in relation to childcare were taken by the Deputy Minister for Social Services.

356. If a decision cut across policy areas of several Ministers and was sufficiently important, it would usually be referred to Cabinet for a decision. Not many decisions in my portfolio responsibility were taken by Cabinet between May 2021 and May 2022. I have outlined the key decisions that were taken below.

357. I worked closely with a number of Senior Civil Servants and officials in various policy teams connected to education. I understand that these teams have been described in the Education Directorate statement M2-EPSSG-01 and also by my predecessor, Kirsty Williams, and so I do not repeat that detail here. I was supported by my Private Office and my Special Adviser (who had previously been Special Adviser to my predecessor,

Kirsty Williams). I also had a dedicated communications team for the first time who helped with communicating decisions taken to the Welsh public and stakeholders.

358. When I became Minister for Education and Welsh Language, I instigated weekly meetings with Welsh Government public health officials and officials from PHW. I asked for and was provided with a slide deck usually weekly which presented data and gave the best understanding of the position in relation to schools.

359. I was privy to scientific advice provided by TAC and medical advice provided by the CMO(W) because I attended meetings where the advice was given orally (such as Cabinet) and it would be included, when relevant, in any MA sent to me.

360. TAG had established the Children and Education Sub-group before I took up my post, which specifically focused on children and young people, education and childcare. The group was used extensively as the main source of scientific and technical advice in relation to the safe operation of education settings. The Deputy Director for Operation of Schools from the Education Directorate was a member of the TAG Children and Education Sub-group. I exhibit the group's TOR as **MEWL/01-161 - INQ000300170** and the minutes of a TAG meeting in July 2021 as an example at **MEWL/01-162 - INQ000000000**. TAG would regularly prepare reports on matters relating to Covid-19 and educational settings, which were then published.

361. I would also regularly ask TAC to brief me on Covid-19 related matters in educational settings whenever I had queries or questions about matters that were arising. TAC were always helpful and addressed my requests, usually in the form of briefings or answering questions by email. I would usually be briefed by the Chief Scientific Adviser for Health (Rob Orford) or by Fliss Bennee.

362. Prior to October 2020, TAC had access to data collections by Welsh Government's Knowledge and Analytical Services of children's attendance at schools and other settings from local authorities (organised by Data Cymru, which is a Welsh local government company which offers specialist support in finding and using data effectively). From October 2020, this information was extracted directly by the Welsh Government from school management information systems on a weekly basis. Additionally, higher education institutions reported numbers of known Covid-19 cases to Welsh Government statisticians on a weekly basis from October 2020. I exhibit as example **MEWL/01-163 - INQ000350380**.

363. The SAIL databank (explained in the statement of the Chief Scientific Adviser for Health for Module 2B) included education attendance data and the School Workforce Annual Census. A number of other datasets that were already available in SAIL were refreshed throughout the pandemic, including the Pupil Level Annual School Census which has been used extensively in pandemic-related research, a school staff vaccination update, in addition to data on shielding staff and teaching assistants. I exhibit examples as **MEWL/01-164 - INQ000350819** and **MEWL01-165 - INQ000300009**.

364. I was not a standing member of the Shadow Social Partnership Council but attended if there was an item agenda on education. I attended the Shadow Social Partnership Council on 7 October 2021, 28 October 2021, 9 December 2021 and 22 December 2021. I exhibit an example of those meetings as **MEWL01-166 - INQ000311651** and **MEWL01-167 - INQ000314514**. Shadow Social Partnership Council meetings were usually chaired by either the First Minister or the Minister for Housing and Local Government.

365. I attended meetings with the Schools Social Partnership Forum more regularly. The Schools Social Partnership Forum was a group comprising Welsh Government officials, employer representatives (local authorities) and the main education sector unions to discuss mainly operational matters. Prior to the pandemic, the Schools Social Partnership Forum met around three times a year. It met much more frequently during the pandemic. During my time as Minister for Education and Welsh Language, in the pandemic, the Schools Social Partnership Forum met fortnightly. It was initially chaired by Councillor Phillippa Marsden, the then Leader of Caerphilly County Borough Council and the Welsh Local Government Association spokesperson on workforce. During the relevant period, the issues on the agenda would determine whether I attended. I would attend if there was a particularly significant or contentious policy decision to be discussed or one where I felt partners might want to be able to discuss a potential course of action directly with me. If I did not attend, I would be given a report by officials, who attended every meeting. I exhibit the Terms of Reference for the Schools Social Partnership Forum as **MEWL/01-168 - INQ000350451**.

366. I later became the chair of the Schools Social Partnership Forum. Meetings thereafter took place monthly and discussed matters of a more strategic nature. The Welsh Local Government Association provided secretariat support of the Schools Social Partnership

Forum and I have not been able to locate a full set of the minutes. I exhibit as an example, minutes of the meetings of 22 June 2021 and 5 October 2021 as **MEWL/01-169 - INQ000350329** and **MEWL/01-170 - INQ000350586**. My diary confirms that I attended the Schools Social Partnership Forum on 22 June 2021, 5 October 2021, 2 November 2021, 14 December 2021 and 22 March 2022.

367.I recall regular meetings with the Children's Commissioner for Wales to discuss the operation of rules and other issues of importance to children and learners in Wales. I exhibit an example of the minutes of the meetings that took place on 13 October 2021 **MEWL/01-171 - INQ000350571** and 17 November 2021 **MEWL/01-172 - INQ000350677**. During the meetings in the year up to May 2022, our joint concern was to discuss the impact of the legislation/guidance on attendance at schools, and how to ensure that children and young people returned to full attendance as swiftly as possible. I explain below the steps we took to achieve this.

368.The decision-making structures we had were a good way to make decisions in the circumstances – they enabled us to do a good job of communicating and coordinating across portfolio areas. Decisions were taken after careful consideration and questioning of policy advice. On the whole, I consider that I received thorough and detailed advice during my time as Minister for Education and Welsh Language. One frustration I had was that in the context of the decision-making framework which we adopted, I did not always know which schools were operating at what level of restriction. However, given the nature of my role, it was not realistic for me to have a full picture of what was happening in each individual school.

369.In my discussion with officials, there were many occasions either in our routine meetings, or in meetings convened to discuss issues at my request, that officials would explain that there were differences of perspective amongst officials and scientists on some of the data or interventions which were under consideration. It was helpful to understand where there was more than one perspective, though naturally in those circumstances it sometimes made it more challenging to be able to provide guidance to the public or to decide on an appropriate intervention.

370.I remained a member of the Ministerial WhatsApp group that was used for general enquiries after the election. This group was used to exchange information and views and offer each other support.

371. I think the measures which we took during my time as Minister for Education and Welsh Language were generally reasonable given our understanding of the virus and the likely effect of interventions at the time. I had confidence in the advice I received and had opportunities to test and question advice when necessary. One of the decisions which stands out most with hindsight relates to the use of face coverings in schools. There was a period leading into the summer of 2021 when there were calls for the requirement to be lifted and when I decided not to do so. These were difficult judgments, requiring a constant assessment of the “balance of harms”. I recognised the adverse impact on learners of having to wear face coverings, but I was also acutely conscious that we had to do all we could to keep schools open and to keep pupils in the classroom given the serious effects on children’s learning and wellbeing of not being in school, and that the use of face coverings was helping to achieve that. I also had in mind that decisions in relation to interventions needed to be taken in the round as far as possible and we were developing a framework of recommended interventions at this time which would include face coverings amongst a range of other steps.

Working with the UK Government and other Devolved Governments

372. During my time as Minister for Education and Welsh Language, communication on education matters with the UK Government and other Devolved Governments took place via phone calls and Ministerial Quadrilaterals. So far as I have been able to ascertain from my diary, there were only two Ministerial Quadrilaterals during the relevant period, on 3 August 2021 and on 21 January 2022.

373. During my time as MEWL, there have been six Secretaries of State for Education. I had introductory conversations with all but one of them, but as a result there was no real opportunity to develop strong ministerial relationships. I wrote to Nadhim Zahawi MP on his appointment in September 2021, and we had productive discussions about qualifications and plans for grading in 2022 and in the longer term. It was important to coordinate the approach to qualifications, as Welsh pupils often attended English universities (and universities in other parts of the United Kingdom) and vice versa. We agreed to keep in touch on this issue in particular.

374. I also had discussions with the Ministers responsible for education in Scotland and Northern Ireland, as well as conversations with higher education Ministers in the UK Government.

375.I attended a Ministerial quadrilateral in January 2022, where we discussed Covid-19 interruptions and the approaches in each of the four nations to mitigating disruptions. We also discussed what we were each doing in relation to pupil wellbeing and supporting disadvantaged and vulnerable learners, but at this time there were no further discussions about co-ordination or collaboration in decision-making.

376.I understand that the contact between officials in each of the four nations has been outlined in the corporate statement of the Education Directorate M2-EP5G-01.

377.Intergovernmental working between the Welsh Government and UK Government was limited in relation to education during my period as MEWL. There was no joint decision making as the nature of the decisions meant they were confined in impact to the relevant nations. There was some information sharing of course.

Working with local authorities in Wales

378.I understand that my predecessor has outlined relationships with local authorities in Wales in the education sector. During this period, I think there was good communication and engagement with local authorities. I continued to meet regularly with the Welsh Local Government Association and local authorities in Wales (including meetings with political leaders, chief executives and Directors of Education). Regular discussions continued to take place at the Schools Social Partnership Forum as outlined above.

379.Local authorities would alert us to emerging issues in schools, practical matters as a result of transmission patterns or sometimes the impact of interventions. These would include trends in staff absence and the challenges in arranging supply cover, the effects on the school day of staggered start times, ventilation challenges, support for those on free school meals who were away from school and the effects in schools of the pressures on our Test Trace and Protect system.

Ancillary matters

380.I did not consider resigning during the relevant period and I had no concerns about the performance of the First Minister or my fellow Ministers, the Counsel General nor any senior officials or Special Advisers. I am not aware that my colleagues had any concerns about my performance either.

Decisions relating to NPIs from 13 May 2021 until 9 May 2022

381. By the time I became Minister for Education and Welsh Language in May 2021, children and young people were back in face to face education (whether primary, secondary, further or higher education). My predecessor had published operational guidance for schools and other educational settings, which were being followed in practice. I did not have to decide to close/re-open schools at any point. The decisions I took were often about whether the NPIs within schools should be maintained or adjusted. I set out the key decisions on NPIs below.

382. During my first week in office, I held a number of introductory meetings with key stakeholders, including the Welsh Local Government Association, the Children's Commissioner for Wales, Qualifications Wales and the Welsh Joint Education Committee (the Welsh examination board), trade unions representing education staff (Association of School and College Leaders, National Education Union, National Association of Head Teachers, Undeb Cenedlaethol Athrawon Cymru, NASUWT, GMB Unison, Unite and Voice), Colegau Cymru, the Chair of Universities Wales, the President of the National Union of Students, and the Welsh Language Commissioner.

383. Two of the key issues I faced on my appointment were the use of face coverings in schools and the proposed appeal process for qualifications in summer 2021. At the time I took office, operational guidance for schools recommended that face coverings should be worn (a) anywhere on the school estate, including in the classroom, by staff at primary and secondary schools if social distancing could not be maintained; and (b) anywhere on the school estate, including the classroom, by secondary learners if social distancing could not be maintained.

384. I received a letter from the Children's Commissioner for Wales on 13 May 2021 (the day of my appointment) which I exhibit as **MEWL/01-173 - INQ000350323** to express her concern about the proposed guidance around appeals for qualifications awarded in the summer of 2021, and about the use of face coverings in the classroom. The Children's Commissioner for Wales indicated to my special adviser on 14 May 2021 that she would like to talk to me urgently about her views on face coverings. I asked for an urgent briefing on the use of face coverings in the classroom on the same day which I exhibit as **MEWL/01-174 - INQ000350612**. The UK Secretary of State for Education, Gavin Williamson, had announced on 7 May 2021 that they would no longer be required in classrooms in England. It was clear to me on taking on the role that we needed to consider the evidence carefully in Wales, in the round with the other interventions we had in place and take a decision as soon as possible. I asked TAC to undertake a full

review of the evidence on the use of face coverings in schools and education settings in the context of the range of measures in place, and to provide further advice. TAC produced a report on this issue on 27 May 2021, as I explain further below. I also took urgent steps to address concerns about appeals, including providing additional funding to WJEC (the Welsh examination board) to support them in the cost of administering appeals so that learners would not face any charges for appeals in 2021.

385. Applying the national Alert Levels, Wales moved to Alert level 2 on 17 May (as agreed at Cabinet on 10 May, the minutes are exhibited as **MEWL/01-175 - INQ00022534**). An update to the Coronavirus Control Plan was published. This meant that there were further easements in terms of the number of people able to meet and the re-opening (subject to some restrictions) of venues such as theatres and concert halls. The public health position was improving: the overall number of confirmed cases was gradually decreasing and the vaccination programme was continuing at pace. At Cabinet, we decided to align the rules for meeting outdoors with meeting in regulated settings, in light of effective mitigation, including from Test, Trace, Protect. Events within Alert Level 2 were to resume. We decided it was too soon to take decisions on relaxing social distancing requirements because of concerns about the new Delta variant. This appeared to be more transmissible and the potential for vaccine escape was uncertain. These requirements would be kept under review.

386. CMO(W) advice, exhibit **MEWL/01-174 - INQ000350612** refers, was that the epidemiological evidence suggested that the requirement for face coverings in classrooms could now be lifted, and their use could be made voluntary. This was on the basis that the improved public health position meant that the risk/benefit ratio of mitigations put in place to avoid transmission in schools had changed. The CMO(W)'s view was that the disadvantages of wearing face coverings in classrooms now outweighed the public health benefits. I did not take a decision on face coverings at this time as I wanted to see the updated advice on this issue in the context of other interventions from TAG before taking a decision. (I would then take the decision in light of that advice on 9 July 2021 as referred to in paragraph 407 below).

387. On 20 May 2021 I received an MA recommending the disapplication of The Changing of School Times (Wales) Regulations 2009. This was to give local authorities and governing bodies the flexibility to stagger start/finish times of the school day to reduce the number of pupils gathering in one place. Similar notices had been made monthly by my predecessor. I approved a number of such requests to allow schools to the flexibility

needed to put in place mitigation in accordance with their risk assessments. I also issued notices temporarily modifying and disapplying curriculum and assessment requirements in response to the Covid-19 pandemic for the month of June 2021 and July 2021

388. I had been fully aware of the impact of Covid-19 on learners as a result of our discussions at Cabinet in my previous role. I received a further update in a detailed MA, which was submitted for my consideration on 25 May 2021 and is exhibited as **MEWL/01-176 - INQ000136854**. Various evidence sources confirmed that there was strong evidence of the impact of Covid-19 on learners, including on mental health, anxiety, loss of motivation, lower achievement in reading and maths, and potential long-term impacts on earning potential (see, for example, the Young Minds survey, Coronavirus and Me survey and research from the National Foundation for Educational Research (NFER) and the Institute for Fiscal Studies (IFS)). Officials had worked with a range of partners, and identified key priorities at this time, namely, targeted support for early years learners and Covid-19 resilience in schools. Many learners across the Foundation Phase could well have had access to only a few weeks of learning in schools and other settings, impacting on their social, emotional, well-being and learning needs. I made a decision to allocate funding to schools and non-maintained childcare settings to employ more staff to increase adult: child ratios to give learners the best chance of effectively re-engaging with their learning. Further funding was allocated to deliver learner well-being, and to build resilience within the system to deal with future disruption caused by Covid-19.

389. On 26 May 2021, I announced this new £19.5 million funding package in an oral statement to the Senedd exhibited as **MEWL/01-177 - INQ000350657**. This funding, which came from the Welsh Government's "Covid-19 Reserve" for 2021/2022, was made available to support these two key priorities: early years learners and Covid-19 resilience. I told the Senedd that my most urgent priority was to ensure that every child and young person should be able to progress to their full potential, in spite of the pandemic, and that I would be guided by the needs of learners and their well-being.

390. On 27 May 2021 TAG produced a statement on the use of face coverings in childcare and educational settings for under 18s exhibited as **MEWL/01-178 - INQ000066360**. The statement summarised the current evidence regarding the use of face coverings within such settings and identified areas of uncertainty where there remained evidential gaps. The statement recognised the potential for harms to children, young people and

staff of the sustained use of face coverings throughout the day, and so recommended that their use should respond to the evolving nature of the pandemic and emerging evidence. TAG's recommendation was that decisions about the use of face coverings should take account of the full range of measures in place within a school setting to control the spread of the virus, and that each school/locality needed to risk assess which measures to put in place. In situations of low community prevalence, the harms associated with the use of face coverings may well outweigh the overall benefits (i.e., harms arising from a false sense of security impacting compliance with other infection control measures, reduced communication between teacher and student resulting in diminished learning outcomes, and respiratory/other discomfort). TAG recommended a localised and risk-based, co-produced approach to the use of NPIs such as face coverings, and that educational settings should balance the harms associated with prolonged use in classrooms, against the perceived benefits of protecting from virus transmission. TAG recommended that, in preparation for September 2021, there should be an assessment of the actual risks at the local level of removing face coverings in favour of other methods of risk management control. This should take account of local transmission rates, whilst giving weight to the views of learners/children, as well as staff and other stakeholders.

391.I accepted this advice, and asked officials to take forward TAG's key recommendations, including commissioning research or modelling as needed to address some questions relating to the balance between infection control and effective education for under 18s. I asked officials to begin discussions with stakeholders around a system of localised risk based assessments in schools, so that these could inform a position for the start of the next academic year, I also asked that officials take forward discussions with stakeholders about what the practical triggers might be which would take us up or down the range of possible NPIs in schools/educational settings. These requests were taken forward with officials in the Education Directorate in conjunction with colleagues in the Health and Social Services Group. Officials also began work on local decision making frameworks for education settings. Stakeholders were consulted on the development of the framework over the weeks ahead. The Schools Social Partnership Forum met on several occasions to discuss the TAG statement on face coverings and the draft frameworks. The Schools Social Partnership was in favour of maintaining the status quo, giving concerns about Delta and rising levels of cases. In light of the escalating concerns about the Delta variant over this period, and the increasing transmission among young people (which I describe below), as well as the need to review the further research that had been commissioned, I decided against

making any change to the operational guidance on the use of face coverings in schools and educational settings at this time. Ultimately, the work I have described resulted in the new Local Covid-19 infection control decision frameworks, which applied from the start of the new academic year in September 2021. I return to these local infection control frameworks below.

392. Cabinet met again on 27 May 2021 to review the Principal Regulations. As the public health position had been improving, Cabinet decided in principle that we would move to Alert Level 1 from 7 June 2021. However, there was still concern over the new Delta variant. We therefore agreed that any move to Alert Level 1 would be subject to conditions remaining stable over the next week, and any further evidence on Delta not changing the assessment of risk. We met again on 3 June 2021, where we agreed to move to Alert Level 1 in two stages. On 7 June 2021, we made mostly outdoor changes. The proposal was that indoor restrictions would change from 21 June 2021.

393. My earlier work on Continuity and Recovery had been taken forward across Ministerial portfolios to produce concrete policy options. By this time, further work had been completed on the overarching education “Renew and Reform Plan”. The Plan aimed to enable all learners to make the progress needed to continue their education and to thrive. It was supported by an agreed package of £150 million of funding over the 2021/22 financial year (some of which had already been announced). The Plan set out how the Welsh Government would use this additional investment to continue to support learners, teachers and staff and to help the education system in Wales recover following the pandemic. The Plan had been developed in light of evidence and the experiences of those involved, assessing the impact on the pandemic on education. It included the impact on Welsh-medium education, blended and distance learning and the well-being of professionals and pupils. We recognised that different learners had been affected differently by the pandemic. As well as the general measures to support the learning and well-being of all learners, the Plan set out the specific target cohorts that we were seeking to support through bespoke packages, namely (i) vulnerable or disadvantaged learners, and learners with Additional Learning Needs (who may not have had access to appropriate support at home, may have struggled with access to learning during the pandemic, and may have difficulties readjusting to school life); (ii) learners in early years (who may have missed key development milestones, particularly Welsh language immersion learners); and (iii) learners in post-16 and transition (where progression to their next phase was a key concern, as well as their longer term employability and skills).

394. On 10 June I considered an MA exhibited as **MEWL/01-179 - INQ000145247** recommending that I adopt the Plan. The First Minister and I agreed to do so.

395. Given the significance of the Plan and the size of the funding commitment, it was then considered by Cabinet on 14 June 2021. Cabinet also approved the Plan. I made a Written Statement to the Senedd announcing the new “Renew and reform: supporting learners’ well-being and progression” on 16 June 2021 exhibited as **MEWL/01-180 - INQ000300018**. The Plan exhibited as **MEWL/01-181 - INQ000066132** was published on the same day. I also exhibit at **MEWL/01-182 - INQ000350718** an Integrated Impact Assessment for the Renew and Reform Programme. This assessment summarises the impacts of the pandemic on learning, and the differential impact on different cohorts of learners.

396. Cabinet met again on 16 June 2021, when we carried out an interim review of the Coronavirus Regulations. I exhibit a copy of the Minutes of the Cabinet meeting as **MEWL/01-183 - INQ000057745**. We discussed the latest evidence and advice on the Delta variant. The CMO(W) advised that cases of Covid-19 had risen exponentially in Wales over the previous two weeks, and the expectation was that this would continue. The resurgence of cases was most marked in younger age groups. TAG provided detailed advice on the Delta variant and advised that the UK was in the pre-peak of a third wave of Covid-19. The R rate was between 2 and 3, and there was evidence of community spread of Delta in Wales. At that time, hospital admissions remained low, but they were increasing steadily in England and Scotland (which were further ahead than Wales in transmission of Delta). We were advised that the relationship between cases, hospitalisations and deaths had changed due to the vaccine, but it was not broken, and the new relationship was not fully understood. Exponential growth of Delta would still produce exponential growth in hospital admissions.

397. We decided to delay the move to Alert Level 1 at least until the next review (due on 15 July 2021) to allow more adults to take up the second dose of the vaccine, and to better understand the dynamics of transmission and harms in England and Scotland (which were between 1 and 2 weeks ahead of Wales). We emphasised the need to communicate to the public that they should continue personal protective behaviours during the summer and into the autumn. Isolation and testing for anyone who developed symptoms, regular hand hygiene, the use of face coverings in crowded indoor settings,

and social distancing all still had important roles to play in mitigating the risk of transmission. The importance of environmental mitigations, such as ventilation, would contribute to social and work settings being “Covid-19 secure”.

398. Cabinet also discussed the issue of face coverings in schools. I informed Cabinet of my decision that the requirement for children and young people to wear face coverings when on school premises would remain in place until the end of the summer term. I also told Cabinet that officials were using this period to finalise a framework to support schools to escalate and deescalate through the use of a range of non-pharmaceutical interventions, as part of the risk assessment process. During this meeting we decided to move fully to Alert Level 1 on 17 July 2021. We also published an updated Coronavirus Control Plan, including a new Alert level 0.

399. On 21 June 2021 I announced a series of measures that were intended to ‘create space’ for schools in order to focus on the needs of children who were returning to education exhibited as **MEWL/01-184 - INQ000350816**. The measures included: continuation of the suspension of the Estyn core inspection programme for schools and Pupil Referral Units until the end of the autumn term; suspension of school performance measures for 2021/2022, relaxation of school reporting measures and school categorisation not taking place in 2021/2022. I wanted schools at this time to prioritise helping learners adjust to the return to face to face schooling. The disruption to education in any event would render unreliable some of the data and information which would have been reported in the absence of the decision to suspend.

400. From the beginning of the pandemic, Ministers had ensured that school pupils and students attending further education colleges who were eligible for free meals continued to receive those meals during times when they were not attending school/college. This support was extended into the holiday periods for pupils and Further Education learners throughout the academic year 2021/2022. I exhibit the Ministerial Advice as **MEWL/01-185 – INQ000350615**.

401. At a press conference on 28 June 2021, I announced my intention that schools and educational settings would be operating as close to normal as possible in the autumn term. I exhibit a transcript of the press conference as **MEWL/01-186 - INQ000350593**. I confirmed that the plan for schools was to move to a more localised approach to Covid-19 measures, so that schools could escalate or de-escalate measures, based on local case rates, and that I would be publishing a framework and supporting guidance for

each education sector that would apply from the start of the autumn term. We shared these draft frameworks with our social partners that week in order to obtain their views. I emphasised that we wanted to address the key challenges that schools, colleges and universities were facing, including ensuring that there were not a disproportionate number of learners self-isolating as a result of one positive test in a year group or “bubble”.

402. On 30 June 2021, I announced plans for a relaxation of restrictions so that further and higher education would no longer need to comply with the 2m social distancing rule. I exhibit a press release as **MEWL/01-187 - INQ000350815**. This would enable more learners to return to face-to-face teaching. I also confirmed plans to introduce contact groups for all adult learners in higher and further education, work based and community learning settings.

403. Concerns had been raised with me about the number of learners who were self-isolating at any one time, including by the Children’s Commissioner for Wales. On 30 June 2021, the Commissioner wrote to me asking me to remove the recommendation for face coverings to be worn in classrooms, to end self-isolation requirements, where the entire year group or bubble was required to self-isolate after a positive test and to ensure that revised guidance allowed schools and colleges to have the freedom to teach and support learners. On 5 July 2021, I issued a response to this letter which I exhibit as **MEWL/01-187a – INQ000000**. I also discussed this with the Children’s Commissioner at our next meeting and these concerns fed into the development of the local decision making frameworks, which I describe further below.

404. In July 2021, focus groups were organised by Children in Wales and the Children’s Commissioner for Wales. Children and young people provided their feedback on operational arrangements in schools. The consistent feedback was that pupils understandably wanted disruption to their school day minimised as much as possible, to be in school and not having to learn remotely, and to avoid the need to self-isolate as much as possible.

405. On 5 July 2021, Cabinet discussed the position in England with regard to the full lifting of restrictions despite rising cases. It was agreed that there should be an ongoing requirement to wear face coverings on public transport and in certain indoor settings, Guidance was given on risk assessments and the recommendations on work from home were accepted, but we decided that it was important that a full equality impact

assessment was undertaken before Ministers took the decision to move to the baseline alert level. I exhibit the Impact Assessment as **MEWL/01-188 - INQ000129974**. This was continued through the subsequent Cabinet meetings in July.

406. On 7 July 2021, I made a series of Regulations to ensure that students who were living with their parents during term time only because of the coronavirus pandemic would be treated as living in student accommodation (so that the amount of maintenance support payable to them was not reduced). I exhibit the Ministerial Advice as **MEWL/01-189 - INQ000235799**.

407. Work on revising the Operational Guidance for educational settings had been taking place throughout June and early July. I was aware that my officials were liaising with officials in the UK Government on next steps for September. I had a call with the Cabinet Secretary for Education in the Scottish Government on 7 July 2021 to discuss the way forward. On 9 July 2021, I received an MA exhibited as **MEWL/01-190 - INQ000136859**, recommending a number of policy changes to the Operational Guidance issued to schools and other educational settings, to take effect from the start of the next academic year. In short, the advice was that:-

- (1) school staff and secondary age learners should be encouraged to take Lateral Flow Tests before the return to school;
- (2) from the start of the new term, we no longer recommended the use of face coverings in the classroom for staff or learners;
- (3) there be a return to normal session times for the new term; and
- (4) schools and settings should plan on the basis that contact groups would no longer have a role to play at the start of term, and contact tracing would be used instead to identify close contacts of any positive test.
- (5) cleaning regimes needed to be proportionate and in line with any other communicable diseases. There was no longer a need for schools/colleges to set aside specific days for deep cleaning.

408. Accompanying this Ministerial Advice was an advice note from PHW to the CMO(W) exhibited as **MEWL/01-191 - INQ000275773**, and further advice from the CMO(W). The recommendations were based on the TAG report on face coverings. The recommendations on contact groups were based on MA-JMEWL-2220-21 exhibited as **MEWL/01-192 - INQ000350717**. The advice considered data which had been gathered through SAIL that showed 5% of children were not attending school due to isolation.

Contact tracing would become the main mitigation. The CMO(W) agreed with the advice. It was recommended that schools be guided to consider face coverings in communal areas and school transport. Our social partners had all been consulted in the development of the guidance. I exhibit copies of the new guidance document as **MEWL/01-193 - INQ000350710**.

409.I made a Written Statement on 9 July 2021 exhibited as **MEWL/01-194 - INQ000350574** confirming that these changes were being introduced to bring some normality back to education ahead of the autumn term. I then wrote to all headteachers and principals in Wales to inform them of this decision. Work continued on the overarching decision making framework for schools for use in the next academic year.

410.Schools broke up for the summer holidays on 16 July 2021.

411.On 16 July 2021, TAG published a paper on the Five Harms Arising from Covid-19 (in the context of considering potential baseline measures). The five harms were (1) harm directly arising from Covid-19 infections; (2) indirect Covid-19 harms due to surge pressures on health and social care system; (3) harms arising from population based health protection measures – e.g. educational harm, psychological harm and isolation from shielding; (4) economic harms, such as unemployment and reduced business income; and (5) harms arising from the way Covid-19 had exacerbated existing, or introduced new, inequalities into our society. The potential harm to children and young people of being out of school was referred to in the paper and, as I have stated above, always weighed heavily with me when making decisions.

412.On 21 July 2021 I received an MA, seeking to improve ventilation in schools. I exhibit the Ministerial Advice as **MEWL/01-195 - INQ000145257**. The advice recommended allocating funding to supply local authorities with CO2 monitors (providing a visual signal of deteriorating air quality and the need to introduce ventilation from outside spaces) and ozone disinfecting machines (developed by Swansea University using Welsh Government research funding) to speed up the cleaning process following a positive Covid-19 test. I agreed to the funding allocations and it was announced on 31 August 2021. I then commissioned advice from TAC on health and safety considerations relating to the use of cleaning machines in school settings and paused the procurement of the machines pending that advice. TAC subsequently conducted a Rapid Review of Air Cleaning Technologies in schools and advised that given the latest evidence on the transmission of Covid-19, any benefits from the use of ozone gas were now outweighed

by the disbenefits of ozone and outlining concerns about their use in classroom settings. I exhibit this advice as **MEWL/01-196 - INQ000311498**. I therefore decided that the element of the approved funding previously allocated for ozone machines should be used instead as a ventilation improvements fund to pay for any remedial actions schools might need to make following the roll out of carbon dioxide monitors to education settings.

413. On 29 July 2021, Cabinet met and we had an initial discussion on the 21 day review due on 5 August 2021. We were advised that cases had increased rapidly since the beginning of June, following a six month sustained reduction in cases. The cases appeared to mainly occur in younger people (aged 10-29) which suggested that vaccination was providing a degree of protection. The vaccination programme was performing well: over 90% of adults in Wales had received their first dose, and almost 80% their second dose. We were also advised that pressure on the NHS remained well below levels seen in previous waves and hospital admissions with suspected or confirmed Covid-19 remained close to the lowest levels seen. We agreed to remove the requirement to self-isolate for people who had been identified as close contacts of a positive test if they had been fully vaccinated for at least 14 days. On 2 August 2021, we agreed to move to Alert Level 0 from 7 August. This removed the remaining legal limits on people meeting up in private homes or public places, lifted requirements on hospital and retail settings and removed the 2m social distancing requirement. Instead, each organisation was to determine the protective measures to adopt, based on their own specific risk assessments. I exhibit the minutes of the cabinet meetings on 29 July and 2 August as **MEWL/01-197 - INQ000022545**. We received a Summary Impact Assessment and Health and Social Impact Assessment which we considered before making this decision an example of which I exhibit as **MEWL/01 – 198 – INQ000129974**.

414. On 12 August 2021 I was provided with an MA on the Local Covid-19 Infection Control Decision Framework (Local Framework), which we had been developing for some weeks, for use in schools from the autumn term 2021. I decided formally to adopt this framework. I exhibit the Ministerial Advice as **MEWL/01-199 - INQ000350716**.

415. On 19 August 2021 I received an MA exhibited as **MEWL/01-200 - INQ000116779** recommending that I adopt the versions of the Local Frameworks for the further and higher education sectors which had also been under discussion with officials. Both frameworks had been developed in consultation with local authorities, universities, colleges, education unions and public health officials. I had some queries in respect of

some of the language and asked for some further clarification but I agreed to their introduction.

416. The Cabinet met on 23 August 2021 for a 21-day review of the Regulations due on 26 August 2021 but I was unable to attend. I subsequently reviewed the minutes and noted that Cabinet had agreed to remain at Alert Level 0 and that further work would be carried out on a potential timeline for the removal of the requirement for face coverings in various settings.

417. On 27 August 2021, I made a Written Statement to the Senedd, confirming that the Local Framework(s) for schools and colleges had been published that day. I exhibit the Written Statement as **MEWL/01-201 - INQ000300060** and the two decision making frameworks as **MEWL/202 - INQ000082268** and **MEWL/01-203 - INQ000350713**. As I explained in the Written Statement, the Frameworks set out arrangements for the delivery of learning, enabling schools, colleges, work-based and adult learning providers to tailor interventions to reflect local risks and circumstances. The Local Frameworks set out core measures that should be in place, regardless of risk level, and variable measures that could be tailored to reflect the level of risk identified. The overall risk level for Wales was to be determined nationally by the Welsh Government, and communicated to all partners. Local public health officials would work with local authorities and schools to identify schools or areas where the risk rating differed. Educational settings were advised to implement measures set out in the Local Frameworks for the risk level applicable to their setting. The Local Frameworks set out the overall risk ratings (low, moderate, high and very high risk), and the criteria for moving between them. They set out the measures that should be taken at each risk level and contained a range of measures, including reducing close interactions, physical distancing, lateral flow testing for staff and pupils/students, and the use of face coverings by pupils, staff and visitors. We also emphasised the importance of ventilation in schools and educational settings, reflecting earlier TAC advice on this issue, which I exhibit as **MEWL/01-204 – INQ000066360**.

418. The guiding principles at the heart of the Local Frameworks were to (1) enable education to operate as normally as possible; (2) secure the best outcomes for all learners by considering both their educational needs and wellbeing; and (3) manage the ongoing risks of Covid-19 as safely as possible as for other infections, and ensure clarity of actions required if there was a Covid-19 case in a school or college.

419. The approach set out in the Local Frameworks was to be adopted as soon as possible after the start of term, and by 20 September 2021 at the latest (we usually tried to allow a two week implementation period if possible). We also published an equality impact assessment and a children's rights impact assessment in respect of these frameworks which I exhibit as **MEWL/01-205 - INQ000087108** and **MEWL/01-206 - INQ000087109**.

420. The Local Framework for higher education was published around the same time, which I exhibit as **MEWL/01-206a – INQ000000000**.

2021/2022 Academic year and the Local Covid-19 Infection Control Decision Framework

421. Children and young people returned to education settings after the summer holidays in early September 2021. The Local Frameworks were followed, and the national risk level was set at low.

422. At the next Cabinet meeting, on 13 September 2021, we noted that the NHS in Wales was the busiest it had been for a number of years. We agreed that the current Alert Level 0 should be retained for the time being. We were informed that all four CMOs had advised that healthy children between 12 and 15 should receive a single dose of the vaccine, which would help reduce disruption to their education. We were advised that there was a meeting of all four UK health ministers later that morning to consider this recommendation. We agreed that the Welsh Government would follow this advice.

423. The Welsh Government had already made £23.3 million available for the provision of free school meals during school holidays during the 2021/22 financial year. On 22 September 2021, I agreed to make further funding available to local authorities to make provision in lieu of free school meals for eligible pupils who were required to self-isolate because of Covid-19, or where schools had to send classes or year groups home due to staff shortages related to Covid-19. I exhibit the Ministerial Advice as **MEWL/01-207 - INQ000350410**. This funding was put in place until the October 2021 half term holiday. The funding was then extended until 30 June 2022.

424. I met with the First Minister on 23 September 2021 to discuss the Covid-19 situation in schools. At this point, the number of those with Covid-19 in schools was increasing and local authorities had been taking action locally to strengthen measures in schools where appropriate. The First Minister and I agreed to keep the matter under close review, and to wait a further week before making any changes to the national risk level

under the Local Frameworks. Officials were asked to consider whether additional measures to control the spread of the virus might be needed.

425. On 1 October 2021, the Minister for Health and Social Services, the Deputy Minister for Social Services and I were asked to take a decision on testing for the under 5s. Previous advice was repeated, namely that the risk of serious illness from Covid-19 infection in young children was rare, and younger children did not transmit the virus at the same levels as adults. The public health benefit of testing children under 5 was therefore reviewed by Public Health Wales and officials at the Testing Clinical Advisory and Prioritisation Group. Their advice was that, in light of those facts and that the testing procedure was invasive for young children and obtaining a sufficient sample could be a challenge, asymptomatic testing of the under 5s should cease and that we should not routinely recommend the symptomatic testing of the under 5s either (although this would remain available for those who needed it). We all agreed with this recommendation, and the change was announced as part of a comprehensive suite of changes to testing for asymptomatic household contacts.

426. In early October, further consideration was given to the approach to self-isolation in schools in exhibit **MEWL/01-208 - INQ000145159**. Children under 18 were not required to isolate following close contact with a positive case unless they experienced symptoms. This was because children were at least risk of experiencing the adverse impacts of Covid-19 but had experienced significant and potentially long lasting impacts as a result of restrictions. Self-isolation had significant impact on their emotional and social well-being. My priority was to ensure that as many children as possible were attending school: but in recognition of concerns which were raised about the risk of transmission, I decided that instead of requiring children to self-isolate, we would introduce the offer of a 7 day lateral flow test regime for secondary school/further education aged learners if they were a household close contact of a positive test. This was in addition to the offer of PCR tests on day 2 and 8 after a close contact). The Minister for Health and Social Services agreed with this approach.

427. Work was also ongoing over this period to support and protect learners in special schools, where there was an increased proportion of individuals who had higher clinical risk. My officials had been engaging with representatives of Special School Head Teachers to discuss whether more should be done to protect their pupils. I later held a roundtable with representatives of Special School Head Teachers as part of a regular series of roundtables held with Head Teachers across Wales. The aim of this proposal

was to help identify asymptomatic adults who worked in special schools at the earliest opportunity, so that they could self-isolate and minimise the risk of them passing on the virus to children attending special schools who were at higher clinical risk. The proposal was that staff in special schools should have a negative PCR test before returning to work and then 10 days of LFT testing. I accepted this recommendation as did the Minister for Health and Social Services and the necessary changes were then implemented. Additional guidance entitled “Children and young people with higher clinical risk and clinically extremely vulnerable adults: guidance for education settings” was first published in October 2021 (and updated at various points thereafter) which is exhibited as **MEWL/01-209 - INQ000082772**.

428. Cabinet met again on 4 October 2021 to carry out the 21 day review. I exhibit the minutes of the meeting as **MEWL/01-2010 - INQ000022549** and **MEWL/01-211 – INQ000022550**. Cases were increasing in Wales and the UK as a whole, particularly among the under 25s. The NHS in Wales was still under pressure, although the number of patients occupying hospital beds had reduced, and all Local Health Boards were below the operational modelling for the pandemic at that time. I reported that the volume of cases amongst children was having an impact on school attendance (with attendance down to around 85% overall). With the increase in the numbers of young people being tested it was inevitable that there would be more cases being identified. Some classes, year groups and a small number of schools had moved to remote learning, mostly due to staff shortages linked to Covid-19 and other illnesses. The intention was to keep the regime in education settings for under 18s in place until the half term break, when it was anticipated that infection rates would decline. We also discussed ventilation measures in schools, and priority was given to the installation of CO2 monitors in schools. The first consignments were due to be delivered to Local Authorities that week, with onwards distribution to schools the following week. We also agreed that our communications campaign, would stress the need for the adequate ventilation of buildings to stop the spread of the virus, and that we would provide guidance to schools on how to respond to low oxygen readings from the CO2 monitors. The 21-day review papers identified that infection rates had increased in the 5-11 and 12-16 age group, but testing had of course also increased in these age groups. No changes were proposed to the national risk level in the education Frameworks at this time.

429. On the same date, I also considered an MA exhibited as **MEWL/01-212 - INQ000136865** on the issue of school attendance. The enforcement of school non-attendance in Wales is a matter for local authorities and schools. The Welsh

Government's position during the Covid-19 crisis had been that these enforcement powers should not be used at this time. I remained concerned about absences since schools had reopened to face to face learning, and my objective was to ensure that all children returned to full time education. However, punitive measures, including fines, were unlikely to be appropriate, save in a small number of cases relating to persistent absence unrelated to the pandemic, where there were concerns about the welfare of a child, or where there had been extensive efforts to try and re-engage with a family by the school and/or Education Welfare Service. Having considered advice from officials, I decided that a review of school attendance patterns in Wales should be undertaken, which I exhibit as **MEWL/01-213 – INQ000337852**.

430. On 14 October 2021, I published a Written Statement to update on the situation in schools and colleges. I also confirmed the publication of additional advice to support children and young people with higher clinical risk and clinically extremely vulnerable adults in education settings, which I have exhibited above.

431. The number of Covid-19 cases in schools continued to rise from the middle of October 2021. On 21 October 2021 I was informed that Scotland had decided to retain face coverings in classrooms. The position in further education and higher education was stable and was giving no cause for concern. This was because this age cohort were highly vaccinated (both students and staff) and this was helping to minimise case rates and the impact on education. I exhibit an email setting this out as **MEWL/01-214 - INQ000350452**.

432. By 25 October 2021, I informed Cabinet that I was going to be looking at whether we should raise the overall national risk level under the schools Local Framework, from low to medium in light of the increased transmission in schools overall. Cabinet agreed that we would have to explain clearly why control frameworks were still in place in schools, while Wales remained at Alert Level 0 nationally. The local framework encouraged schools and local authorities to take decisions based on their own risk assessments to reflect the different levels of risk across the country. Ultimately, instead of raising the risk level nationally, I decided to publish further guidance to schools and local authorities to assist with their decision making. On 4 November 2021 the Local Covid-19 Infection Control Decision Framework for Schools – toolkit and flowchart were published to supplement the framework and help local decision making I exhibit this document as **MEWL/01-215 - INQ000350454**. These documents had been prepared in consultation with local authorities, unions, the Children's Commissioner for Wales and the National

Deaf Children's Society. The toolkit aimed to help schools to decide when to consider introducing different interventions, and when it would be necessary and proportionate to act.

433. On 12 November 2021, I agreed to provide additional £10 million in year funding to local authorities and further education colleges for children and young people with Additional Learning Needs who had been further disadvantaged by the pandemic. Schools had consistently identified additional learning needs as the biggest funding pressure for them. The advice addressed the connection between additional learning needs and socio-economic disadvantage. Data from SAIL also showed that this cohort was also more likely to be absent from school. The funding was to be used to support children and young people with Additional Learning Needs to recover from the inequitable impacts of Covid-19 and was targeted at the direct provision of enhanced and/or additional on-site support for those learners.

434. On 29 November 2021, the emergence of the 'Omicron' variant in South Africa was reported. In the Cabinet meeting on that date, I exhibit the minutes as **MEWL/01-216 - INQ000022512**, CMO(W) and the CSA(H) addressed us on the information that was available about the new variant. Evidence from South Africa suggested that Omicron had increased transmissibility when compared to Delta, with the potential to re-infect those who had been previously infected. At this point they explained that it was not known if Omicron would be more harmful and it was considered possible that it could 'escape' the vaccines. Urgent plans were drawn up to enhance the vaccination booster programme and we noted the need to continue encouraging all those who had not been vaccinated to come forward, particular people in Black, Asian and Minority Ethnic communities. We agreed that the public health response would be to try and control entry of the new variant into the country, and then slow its introduction by using Test, Trace and Protect and requiring those infected and close contacts to self isolate. The public would be encouraged to maintain social distancing and wear face coverings while indoors. We also considered the impact on the education sector and agreed that the use of face coverings should be strengthened in secondary schools, colleges and universities for the rest of the winter term. Our aim was to maximise learning and minimise disruption for our young people. With the high level of uncertainty about Omicron, I wanted to remain cautious while prioritising the continuation of education.

435. The Local Framework was amended, to state that from 29 November 2021, our guidance regarding the use of face coverings in schools (and other settings) had

changed temporarily as a precautionary step while we learned more about the Omicron variant. The amendment stated that face coverings should be worn by staff and visitors in all indoor areas of all settings, including classrooms, in situations where physical distance could not be maintained. Face coverings should also be worn by secondary aged learners in all indoor areas, including classrooms, where physical distance could not be maintained. Face coverings were still recommended for secondary aged learners on school transport. We continued our exemptions regime.

436. I sent a letter to local authorities, Heads and leaders of Further Education colleges informing them of the decision, as well as to universities. I explained that this was a temporary, precautionary measure. The JCVI was also considering extending the vaccine roll out to children and young people (a second dose for 12-15 year olds and offering the vaccine to younger children).

437. Cabinet met more frequently throughout December 2021 to discuss the rapid increase in infection rates caused by the Omicron variant. We did not close education settings at this time, given the clear evidence about the harm caused to children and young people from closing schools, and our commitment that education settings would be the last to close. My priority, and that of the Welsh Government as a whole, was to minimise the disruption to education, and to ensure where possible learners continued to receive in person learning, as well as protecting staff and learners from any harm caused by Covid-19. I exhibit minutes of Cabinet on 2,6,8,9 December as **MEWL/01-217 - INQ000022559**, 13 December as **MEWL/01-218 - INQ000022560**, 16 December as **MEWL/01-219 - INQ000057970**, 20 and 21 December as **MEWL/01-220 - INQ000057982**.

438. On 16 December 2021, I announced the steps that schools should take to plan for the next term, in light of the risks posed by Omicron. I exhibit the Written Statement I made as **MEWL/01-221 - INQ000350620** and the related MA as **MEWL/01-222 - INQ000136874**. All schools were to have two planning days at the beginning of the next spring term, in January 2022, to allow time for schools to assess staffing capacity, to undertake contingency planning reflecting the circumstances at that time and to put the necessary measures in place to support the return of all learners. All learners were to return to onsite provision by Monday 10 January at the latest. Schools were to plan on the basis that the temporary measures I had introduced on 29 November 2021 to the Framework would remain in place for the return in January. However, this would be kept under review based on what we would learn about the Omicron variant over coming

weeks. As a precautionary approach, all schools were advised to plan that mitigations from January onwards were based on those set out at the 'Very High' risk level in the Local Framework for schools. I also emphasised that staff and learners continued with regular Lateral Flow Testing in term time, so that we could find and isolate those who were potentially infectious to others without knowing. I asked staff and learners of secondary age and above to test three times a week using LFDs in the week before returning to school, and to continue testing regularly three times a week after the start of term in January.

439. On 16 December 2021 I sent a letter to Headteachers exhibited as **MEWL/01-223 - INQ000350461** thanking them for their hard work and commitment during what I knew had been an extremely challenging term. I set out the steps that would be in place for the new term. I also published a set of Frequently Asked Questions for school operations from January 2022.

440. At the Cabinet meetings on 20 and 21 December 2021, we again discussed Omicron (and received an update on COBR discussions about the same). We agreed to move to Alert Level 2 on 26 December 2021. This was driven by the increased transmissibility of the Omicron variant and the need to protect the NHS which was already under considerable pressure. From 26 December 2021, all indoor and outdoor events would be closed to spectators.

441. Following advice on 15 December 2021, on 05 January 2022, I published a Written Statement exhibited as **MEWL/01-224 - INQ000350711** with an update on the latest position with the national guidance on the operational arrangements for schools exhibited as **MEWL/01-225 - INQ000350715** and colleges exhibited as **MEWL/01-226 - INQ000350714**. I confirmed schools and colleges had been asked to continue to plan for the most protective measures in accordance with the framework. Schools were also provided with the option to operate staggered start and finish times as an additional mitigation should their risk assessment support this.

442. Cabinet met on 10 January 2022 to discuss the implications of Covid-19 across government in advance of the 21-day review the following week. The CMO(W) advised that there was significant community transmission of the virus. The 7 day average had reduced, but it was too early to tell whether the trajectory of cases had reversed, and children returning to school and people returning to work after Christmas holidays was likely to have an impact on infection rates. We were told that further advice on the harms

caused by Omicron was expected in the next week or so. However, pressures on NHS services were expected to continue, with pressures on beds and staff absences due to sickness and self isolation requirements. I provided an update on the impact of Omicron on education. I informed Cabinet that a small number of schools would be moving some classes or years to remote learning on a temporary basis, but the majority of learners would be onsite as planned. Staff absences were around 10% and this was expected to increase with the reopening of buildings and resumption of after-school activity. I reminded Ministerial colleagues that there had been significant funding made available for measures to monitor and improve ventilation in schools, colleges and universities. I said I anticipated that there would be concerns raised about the impact of remote learning on exams. Colleges and universities were continuing with blended learning.

443. Fortunately, by the time of the Cabinet meeting on 13 January 2022 to discuss the next 21-day review there had been a rapid change in the trajectory of the data and infection rates were falling. I was giving evidence to a Senedd committee at the time of the call, but reviewed the papers and the minutes, which I exhibit as **MEWL/01-227 - INQ000057924**. The CMO advised Cabinet that the situation had changed rapidly in the last 48 hours, with a reduction in the number of cases being reported. Hospital admissions were reducing, and the number of people in ICU was also falling. The rate of harm caused by Omicron appeared to be less serious for those that had been vaccinated. Cabinet was advised that the peak of the Omicron wave had either already been, or would very soon be, reached. A staggered approach to lifting restrictions was proposed, depending on the public health situation. Outdoor restrictions were to be lifted on 21 January, and we would return to Alert Level 0 baseline measures on 28 January 2022. Cabinet agreed to review matters weekly and noted that protections governing education settings would be subject to separate guidance, and that maintaining face to face learning wherever possible was vital.

444. Cabinet met again on 17 January 2022, when the 21 day review took place. I exhibit here the minutes of the meeting, as **MEWL/01-228 - INQ000130013**. The downward trajectory of Covid-19 cases was continuing in Wales, and there was cautious optimism that the situation was beginning to stabilise. We agreed to adopt the measures that had been agreed in principle at the previous meeting. An education summary was produced for this meeting which I exhibit as **MEWL/01-229 - INQ000130018**. This reminded Cabinet that updated guidance had been published before the start of the school term indicating that schools and colleges should now be operating at the “very high’ risk level, set out in the Local Framework. The paper also informed colleagues that the majority

of learners were back in classrooms as of 10 January 2022. Attendance rates were however only in the region of 80%. Local authorities were asked to provide an overview of the extent to which the very high-level mitigations had been introduced in schools and settings to help inform decisions moving forward. This included staggered start/finish times where the school session Regulations had been temporarily dis-applied until the end of January to enable schools to use this as part of their suite of mitigations. In secondary schools, there was a significant focus on testing of both staff and learners three times a week and the wearing of face coverings in the classroom where physical distancing could not be maintained. For primary schools, both testing and wearing of face coverings were in place for staff but not for learners given their ages. There was also an increased emphasis for all settings on ventilation and schools had been provided with CO2 monitors and access to funding to support them with this.

445. I made a Written Statement to the Senedd on 25 January 2022 exhibited as **MEWL/01-230 - INQ000350495** to provide an update on school operations. I reiterated the Government's position that for well-being and learning, it is vital that children and young people are in school. I signalled that, if the evidence supported it, we would confirm at the next three week review point on 10 February that schools should return to making local decisions on mitigations in line with the Local Framework by the beginning of the new half term on 28 February. I also provided an update on managing and improving ventilation in classrooms (and the latest TAG advice on this which is exhibited as **MEWL/01-231 - INQ000066374**).

446. Cabinet met on 7 February 2022 to carry out the 21 day review. I exhibit the minutes of this meeting as **MEWL/01-232 - INQ000130031**. We were advised that while there was still a high level of community transmission, the vaccination programme and the lower severity of Omicron meant that ongoing harms from the virus were much less than the original modelling suggested. There was cautious optimism that the situation was improving, and a gradual easing of restrictions was recommended. We agreed to remove the mandatory use of the Covid pass, and the requirement for risk assessments and reasonable measures for regulated premises from 28 March. We also agreed to remove the requirement for face coverings for indoor public places from 28 February (although these would be retained in retail, public transport and health regulated settings). We agreed that schools should plan to return to operating in line with the Local Infection Control Framework (without the amendments of November) immediately after half term. Self isolation requirements were to remain in place.

447. On 11 February 2022, I made a Written Statement to the Senedd, confirming that schools would indeed return to using the Local Framework by the beginning of the new half term on 28 February, in line with the Welsh Government's 21-day review on the same date. I exhibit this statement as **MEWL/01-233 - INQ000299955**. The return to using the Local Framework would enable schools to tailor interventions to reflect local circumstances, and detailed core measures that should be in place, regardless of risk level. I confirmed that from 28 February, all schools should implement the advice on use of face coverings for the "High" risk level as set out in the Local Framework. This meant that face coverings were no longer routinely recommended in classrooms, but should be worn by secondary aged learners, staff and visitors in all schools when moving around indoor communal areas outside of the classroom, where physical distance could not be maintained. The Framework was updated on that day to reflect these changes which I exhibit as **MEWL/01-234 - INQ000350709**. I confirmed that we would continue to keep our advice under regular review.

448. On 28 February 2022, Cabinet carried out a further 21 day review. We agreed to continue with the cautious easing of the protections which were in place. We agreed to remove the requirements for face coverings in all indoor public places from 28 March if conditions remained favourable. Until then, they would still be required for health and social care settings, all retail premises and public transport.

449. On 23 March 2022 I was informed that Scotland was intending to keep face coverings in communal areas in its schools after the Easter holidays and Northern Ireland was considering similar measures. In Wales, whether face coverings would be used in a school would depend on the risk level under the Local Framework but the national risk level was still at "High" so secondary aged pupils, staff and visitors in all schools would be expected to wear face coverings when moving around indoor communal areas outside of the classroom, where physical distance could not be maintained.

450. At the Cabinet discussion on 24 March 2022 we discussed the fact that case numbers were rising again and there was a need to proceed more cautiously than we had previously set out. We agreed to retain the need for face coverings in health and social care settings but removed it from retail settings on 28 March 2022. On 14 April 2022, Cabinet agreed to remove further restrictions, including to remove the legal requirement for coronavirus risk assessments and reasonable measures from 18 April 2022. We introduced public health advice/guidance for businesses, employers and event organisers from this date.

451. By early May 2022, Wales was in a “Covid stable” scenario and the public health risks for education settings had reduced significantly. In early May 2022, I decided to withdraw the Local Frameworks for higher and further education. This was to be replaced with public health advice to support universities and colleges. Universities, colleges and unions had been consulted on the change, which led to strengthening of advice on vulnerable workers. I exhibit this MA as **MEWL/01-235 - INQ000350611**. The advice contained a clear steer on public health control measures such as sufficient ventilation, robust cleaning and personal hygiene practices, regular training, physical distancing, enabling working from home, exclusion of symptomatic individuals and those who have tested positive and supporting vaccine take up. I agreed that the continuation of additional the Frameworks in these sectors was no longer proportionate and agreed to replace them with the public health guidance.

452. I also decided to withdraw the Local Framework for schools and replace it with public health guidance: ‘Public Health Advice for Schools: Coronavirus’ which I exhibit as **MEWL/01-236 - INQ000082806**. The School Social Partnership Forum and Public Health Wales had been consulted. On 5 May 2022, I announced the publication of Public Health Advice for Schools: Coronavirus, as exhibited as **MEWL/01-237 - INQ000300013**. This new advice brought schools and education settings into line with other sectors in Wales in terms of public health advice and Covid-19. Special schools continued to follow the advice for children and young people with higher clinical risk and clinically extremely vulnerable adults.

453. On 9 May 2022, we announced that the Local Frameworks for Higher and Further Education institutions was formally removed, exhibited as **MEWL/01-238 - INQ000300056**.

Covid-19 public health communications in Wales

454. During my time as Counsel General, I was engaged in discussions in Cabinet on the general public health messages which would reflect the approach which we took on Regulations and guidance, but since I did not have a policy portfolio, I did not have a body of sector stakeholders with whom I had a dedicated channel for public health communications. I was also engaged in advising on and contributing to guidance as outlined earlier in this statement.

455. In general terms, I think the Welsh Government took an approach to public health communications which sought to explain the reasons behind decisions as fully as possible. Inevitably however, when we moved beyond the initial lockdown into a period of gradual lifting of restrictions, and then re-imposition of certain restrictions, the communication became more complex and sometimes involved messages which were quite hard to explain. An example of this would be the five-mile “rule of thumb” which I refer to in paragraph 196, which was not a hard and fast rule and required the exercise of judgment which might vary based on whether a location was rural or urban, for example. On other occasions, restrictions would require distinctions which were difficult to explain simply – the distinction between ‘essential’ and ‘non-essential’ goods in the context of supermarket restrictions in the autumn of 2020 would be a good example of this. We were however alive to the potential for confusion, including the confusion caused by changes to Regulations. This influenced the decision to move to the ‘tiered’ approach to restrictions as described in paragraph 285 above.

456. We were also conscious of the different messages which people in Wales would be hearing from the Welsh Government on the one hand and the UK Government on the other, both of which would be broadcast in Wales, and each having a different territorial application. The public would understand that the messages from the Welsh Government would apply in Wales but it would not necessarily be clear that the messages communicated by the UK Government would be limited to England. I have given examples in paragraphs 64 and 70 of the actions which I took to seek to address this in correspondence with the Attorney General and in television interviews at a key moment.

457. In relation to my time as Minister for Education, as set out in the Education Directorate corporate statement M2-EPSSG-01, the communications teams for Health, Education and Childcare worked closely together throughout the pandemic to ensure that messaging to parents and the public was clear and consistent. Long-standing links with wider public sector communications teams helped ensure there were networks in place to disseminate information to parents clearly through various channels, networks and methods. In particular, strong working relationships were developed with local authorities via the Welsh Local Government Association, who would share and amplify our messaging via their communication channels.

458. A range of techniques were used to ensure a clear flow of consistent messaging to the childcare and education sector, who engage more directly with parents/carers on a daily basis, and also directly with parents. Examples include:

- Setting up a childcare and education stakeholder bulletin to ensure stakeholders were briefed and had access to consistent messaging for parents;
- Use of Dysg, the Welsh Government's newsletter to schools and colleges, to communicate with the workforce (40,000 + subscribers);
- I continued to use the Minister for Education social media accounts, especially Twitter to share announcements and to engage with parents;
- I held Q&A sessions on Twitter for parents, as well as taking part in Welsh Government press conferences to make childcare and education related announcements;
- Developing good working relationships with University Communications teams and the UK Department for Education Higher Education communications team to ensure messaging to students was consistent across Wales and England. We ran a Keep Wales Safe campaign targeting students and families at key times in the year. We also supported the health communications team who worked with Public Health Wales to amplify vaccination campaigns targeting students;
- Information was also shared via the Universities and Colleges Admissions Service channels direct with students and provided communications materials to universities and their students' union for them to adapt as they considered students would listen to messaging which came direct from their institutions;
- Further Educations colleges were also provided with communications materials for them to share via channels that were trusted by their college community.

459. By the time I became Minister for Education and Welsh Language, there was an established pattern of communication on education matters with key partners and also channels of communication to schools, the workforce and parents. I feel that this generally worked well. When introducing changes to schools, we had agreed usually to try to provide two weeks' notice so that there was a proper period for implementation. We generally managed to do this during my time, as a more regular rhythm of activity was generally possible by then, but there were one or two occasions where due to the need to act rapidly, this was not possible. This attracted some criticism from teaching unions but was unavoidable in practical terms.

460. The regular education public health meeting was an important opportunity to make sure I was across trends in transmission in particular in school aged children and young people as they were emerging, and to identify any concerns in relation to transmission and absence amongst school and college staff. I have highlighted one or two instances where fuller advice would have been helpful, but these were exceptions and I felt generally that the advice I received was reliable and drawing on evidence, and strong networks of engagement. One of the key challenges as ever was the need sometimes to make decisions when there remained open questions about the data but that was not unusual during the pandemic. There were occasions where I would challenge advice and press for more information, but that is an important part of a Minister's role.

461. I found it helpful during some of this time to speak directly to headteachers about their experiences in school and I often arranged Teams calls for 1-1 discussions with heads (who would be invited via Dysg to request a meeting) or through online roundtable discussions). Engagement with our social partners continued regularly through the School Social Partnership Forum and through the wider Shadow Social Partnership Council.

Reflections and lessons learned

462. During my time as Minister for Education and Welsh Language, I appeared before Senedd committees on a number of occasions to discuss Covid-19 related matters. A list of my attendances during the relevant period is exhibited at **MEWL/01-239 - INQ000350727**, together with transcripts of my evidence. I did not appear before the UK Parliament during this time.

463. I have not participated in any internal or external reviews or lessons learned exercises. I understand that the internal exercises conducted by officials have been set out in the witness statement of Tracey Burke. I have set out my key reflections and lessons learned in the body of this statement above.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Personal Data

Signed: _____

13 December 2023

Dated: _____