



**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION
MODULE 7 - SCOTTISH MINISTERS**

Introduction

1. In my [Opening Statement](#) on 21 July 2022, I explained that modules would be announced and opened in sequence, with those wishing to take a formal role in the Inquiry invited to apply to become Core Participants for each module. On 19 March 2024 the Inquiry opened Module 7 and invited anyone who wished to be considered as a Core Participant to that Module to submit an application in writing to the Solicitor to the Inquiry by 26 April 2024.
2. On 25 April 2024 the Inquiry received an application from Scottish Ministers (“the Applicants”) for Core Participant status in Module 7. This Notice sets out my determination of the application.
3. The Inquiry has published the [Provisional Outline of Scope](#) for Module 7, which states that this Module will consider the policies and strategies developed and deployed to support the test, trace and isolate system by the UK Government and the Devolved Administrations. Further modules will be announced and opened in due course, to address other aspects of the Inquiry’s Terms of Reference.

Application

4. Applications for Core Participant status are considered in accordance with Rule 5 of the Inquiry Rules 2006, which provides:

5.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—

- (a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;*
- (b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or*
- (c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*

(3) A person ceases to be a core participant on—

- (a) the date specified by the chairman in writing; or*
- (b) the end of the inquiry.*

5. In accordance with the approach set out in my Opening Statement and the Inquiry's [Core Participant Protocol](#), I considered whether the application fulfils the requirements set out in Rule 5(2) in relation to the issues set out in the Provisional Outline of Scope for Module 7.

Summary of Application

6. This application is brought on behalf of the Scottish Ministers. Ministerial responsibility for Test and Protect was held by the Cabinet Secretary for Health and Sport (Cabinet Secretary for Health and Social Care from May 2021). The application describes how Test and Protect was a fundamental part of the Scottish Government's strategy to mitigate the impacts of Covid-19 on public health, the Scottish Government engaged regularly with the UK Government and other Devolved Administrations on matters relating to Test Trace and Isolate, and that testing model output and scenario modelling were regularly part of the advice given to Scottish Ministers.

7. With regard to the forward-looking aspect of Module 7, the application states:

"Under the Inquiry's Terms of Reference it must report on its examination of the preparations and response to the Covid pandemic in Scotland. The Inquiry may make recommendations in relation to the practice, policy, or legislation around Test and Protect activity. The Inquiry's reports and any recommendations in relation to Module 7 will inform relevant future decision-making in Scotland. Scottish Ministers will therefore have a significant interest in these reports and recommendations."

Decision for the Applicants

8. I have considered with great care everything that is said in the application. Having done so, I have decided, in my discretion, to designate the Applicants as Core Participants in Module 7.
9. Module 7 will consider the test, trace and isolate policies and strategies enacted in Scotland and across the United Kingdom. It will consider a range of issues relating to the development of testing, contact tracing and the Test and Protect system. Thematic issues relating to the impacts of isolation, the unequal distribution of the impacts of isolation requirements and how the Scottish Government intended to address these impacts will be examined. The role of the Applicants in the engagement between Devolved Administrations on the development, deployment and refinement of testing and tracing policies will also be examined.
10. I consider that the Applicants meet the criteria in Rule 5(2)(a) in that they played a direct and significant role in the matters to which Module 7 relates, in particular the development of testing and tracing policies and procedures, the development and enforcement of isolation requirements, and the oversight of Test and Protect and the funding for testing and tracing. I also consider that the Applicants meet the criteria in Rule 5(2)(b) as they have a significant interest in these important aspects of Module 7. Finally, the Applicants may be subject to explicit or significant criticism during Module 7 and therefore also satisfy the criteria in Rule 5(2)(c).

Legal Representation

11. Applications for designation as the Recognised Legal Representative of a Core Participant are governed by Rules 6 and 7 of the Inquiry Rules 2006, which provide:

6.—(1) Where—

- (a) a core participant, other than a core participant referred to in rule 7; or
 - (b) any other person required or permitted to give evidence or produce documents during the course of the inquiry,
- has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.

7.—(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that—

(a) their interests in the outcome of the inquiry are similar;

(b) the facts they are likely to rely on in the course of the inquiry are similar; and

(c) it is fair and proper for them to be jointly represented.

(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.

(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.

(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.

12. I am satisfied that Scottish Ministers have appointed Caroline Beattie of Scottish Government Legal Directorate as their qualified lawyer in relation to this Module. I therefore designate Caroline Beattie as Scottish Ministers' recognised legal representative in accordance with Rule 6(1).

13. Directions will be given in relation to applications for an award under section 40(1)(b) of the Inquiries Act 2005 of expenses to be incurred in respect of legal representation, at the forthcoming preliminary hearing. I will determine any such applications in accordance with the provisions of section 40 of the Inquiries Act 2005, the Inquiry Rules 2006, the [Prime Minister's determination](#) under section 40(4) and the [Inquiry' Costs Protocol](#).

Rt Hon Baroness Heather Hallett DBE

Chair of the UK Covid-19 Inquiry

17 May 2024