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FROM: JAYNE BRADY, HOCS

DATE: 12 NOVEMBER 2021

TO: FIRST MINISTER AND DEPUTY FIRST MINISTER

SUBJECT: UKG COVID INQUIRY

Issue: This paper provides you with an update on UKG planning for the UKG Public Inquiry into the COVID pandemic and preparatory steps being undertaken by NICS.

Timescale: ROUTINE.

Press Office Advice: There has been comparatively limited media coverage to date in relation to the proposed Inquiry however any publication of the draft Terms of Reference is likely to result in increased coverage and potential calls for a local Inquiry.

FOI Implications: Potentially disclosable

Financial Implications: None in relation to this submission however the costs associated with servicing any Inquiry are expected to be significant.

Legislative Implications: N/A

Executive Referral: N/A

Recommendation: It is recommended that First Minister and deputy First Minister note the content of this submission and the preliminary steps being taken by NICS to prepare for a COVID Inquiry.

Background

1. In September 2020, UKG responded to a petition to hold a public inquiry into the handling of the COVID-19 pandemic, stating that “there will be an important moment to look back, analyse, and reflect and to learn lessons. As the Prime Minister has said, this will include an independent inquiry at the appropriate time.”
2. On 12 May 2021, the Prime Minister announced that he expects the inquiry to commence in spring 2022. The inquiry will “consider all key aspects of the UK response” and place the State’s actions “under the microscope” to identify the “key issues that will make a difference for the future”. The public inquiry will be on a statutory basis under the Inquiries Act 2005.
3. Establishing the inquiry under the Inquiries Act 2005 means that this inquiry will have the highest degree of formality and legal powers possible, with the ability to compel individuals and organisations to provide documentation, witness statements and oral evidence.

Scope of public inquiry

4. The terms of reference are yet to be finalised however it is anticipated that the scope of the inquiry will be broad and could cover a range of issues including –
 - the UK’s preparedness;
 - the public health response (e.g. lockdowns; non-pharmaceutical interventions; shielding; travel restrictions; test, track & trace and vaccination programmes);
 - the Health and Social Care response (e.g. PPE; capacity and resilience; management of pandemic within hospitals and care homes);
 - the economic response (e.g. economic interventions and financial supports);
 - and
 - societal impacts (e.g. education, justice).
5. The proposal is that the inquiry will also scrutinise the responses of the Devolved Administrations. Under section 27 of the 2005 Act there is an obligation to consult with the devolved administrations before terms of reference are finalised.
6. On Tuesday 24th August, pursuant to an SNP manifesto commitment, Scottish Ministers announced plans to establish a judge-led inquiry in Scotland under the Inquiries Act 2005 which will be in place by the end of this year. They have published draft aims and principles which, subject to extensive public engagement, will help

shape the terms of reference. It is not yet clear how the two inquiries will interface with each other, nor how each ToR will be designed to cater for the existence of the other.

7. The Welsh Government's stated preference is to participate in the UKG Inquiry and not hold a local Inquiry. However we understand that there are growing pressures within Wales to establish a complementary Welsh Inquiry. First Minister Drakeford has taken the position that he wants to see the UKG draft terms of reference to enable him to more fully understand how, and to what extent, devolved matters will be addressed.

The Executive position

8. The issue of a public inquiry has not been ventilated at Executive and it is not unreasonable to defer any final decision until Ministers have had the opportunity to consider the UKG draft Terms of Reference.
9. At official level we have emphasised the need for the statutory consultation on terms of reference to be meaningful and, recognising the nature of the 5 party coalition Executive, to allow sufficient time for First Minister and deputy First Minister to engage with Executive colleagues. However, it is not inconceivable that the consultation will be done at speed and may inhibit effective engagement across the Executive. You may wish to consider the option of canvassing preliminary views from colleagues by way of correspondence in advance of the draft terms of reference being received.
10. The primary perceived advantage of a devolved inquiry would be to allow a more detailed scrutiny of decisions, actions and impacts within our local context. In practice it may not be possible determine how much value a devolved Inquiry would add until there is a fuller understanding of how devolved issues will be addressed by the UKG Inquiry.
11. It is also possible that the terms of reference will not completely clarify this issue as the Chairman or Inquiry Panel will have considerable discretion over the procedure and operational aspects of the Inquiry.
12. Undoubtedly one of the biggest challenges would be managing the interface between a devolved inquiry and the UKG inquiry, which will be crucial to avoid duplication and minimise the burden on participants. Inevitably there is a strong likelihood that witnesses would be required to give written or oral evidence to both inquiries. There is a risk of different, possibly conflicting, conclusions or recommendations coming the respective inquiries.

13. The cost of servicing a local Inquiry is difficult to quantify with any degree of certainty until the scope, processes and duration are more fully developed. However the RHI Inquiry may offer a useful, if much more limited, comparator. In September 2020, DOF published indicative costs for the RHI Inquiry of £11.596m made up as follows –

- £7.362m Inquiry costs (1.2.17 to 31.8.20);
- £4.234m Departmental legal costs

14. Whether there is a UKG-established or a devolved Inquiry, or both, there will inevitably be considerable costs including legal costs in relation to the Departments' responses. It also seems probable that large NDPBs, for example the Health Trusts, will have costs of their own.

Public inquiry preparation

15. Any organisation could be required to provide evidence for a public inquiry into Covid-19, and individuals may be mandated to attend and give evidence under oath. This could include NICS Departments; Agencies and other ALBs; and other partners and contractors.

16. To prepare, we need to consider four key areas of action:

- Ensuring robust and comprehensive records management;
- Embedding systematic approaches to log key leavers, carry out exit processes and retain contact details;
- Considering wellbeing support for staff who may have to provide evidence; and
- Appoint a named inquiry lead.

Together these will essentially form the basis of a 'Secure and Prepare Strategy'.

17. It is vital that Departments and ALBs are in a position to meet their obligations to any inquiry to provide relevant records, information and data as are requested. This includes ensuring that no material of potential relevance to the inquiry is destroyed. Given that the terms of reference are yet to be agreed this will require us to take the broadest interpretation of potential relevance.

18. In terms of records management NICS has an established governance programme in place which has provided staff with refreshed guidance on things like what is a record/what should be saved etc. The importance of this area was underscored by recommendations from the RHI Inquiry. As part of our communications to staff it would be sensible to highlight a public inquiry as something that staff need to be aware of and thinking about in relation to information governance. There is always a risk that if relevant emails are not saved as records they will be purged from the system after the fixed retention period.
19. On 16th September HOCS wrote to all Permanent Secretaries requesting a positive assurance that relevant records have been and are being preserved.
20. It is not inconceivable that when an inquiry is established it will begin to work at pace and Departments have been encouraged to begin to develop timelines and narratives around key decisions/actions that were taken during the course of the pandemic. As part of their Business Continuity Plans many Departments and ALBs may have operated a system of decision logs which may help in the preparation of these high level narratives.
21. Departmental Solicitor's Office has produced two guidance documents which are appended for information –
- DSO preliminary guidance in advance of any COVID-19 Public Inquiry (**Annex A**)
 - DSO Witness Guide - COVID Inquiry (**Annex B**)
22. In addition, DSO and TEO have been progressing some scoping work with DOF's Enterprise Shared Services which includes –
- Scoping possible automated technology to support document redaction;
 - Potential to use AI solutions for intelligent searching of data/information within documents;
 - Scoping options for digital transfer of discovery material to Inquiry potentially based on an existing API between NICS and PRONI.

Recommendation

23. It is recommended that you
- note the content of this submission and the preliminary steps being taken by NICS to prepare for a COVID Inquiry; and
 - consider the option of canvassing preliminary views from Executive colleagues by way of correspondence in advance of the draft terms of reference being received.

JAYNE BRADY

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