

**Witness Name: Neil Rennick**

**Statement No: 6**

**Exhibits: NR6**

**Dated: 16 April 2025**

**UK COVID-19 INQUIRY  
MODULE 7**

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**FINAL**

**WITNESS STATEMENT OF THE DIRECTOR GENERAL EDUCATION AND  
JUSTICE**

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**This statement is one of a suite provided for Module 7 of the UK Covid-19 Inquiry and these should be considered collectively. In relation to the issues raised by the Rule 9 notice dated 13 December 2024 served on the Scottish Government, in connection with Module 7, the Director• General Education and Justice will say as follows:**

**A: Roles and Responsibilities**

**Education Directorates within Director General Education and Justice**

1. The Permanent Secretary is the senior civil servant in Scotland.  
There are eight portfolio Directors General (DG) who report to the Permanent Secretary. A Director General manages a number of Directorates and agencies which are responsible for proposing legislation and putting Scottish Government policy into practice. The Director General for Education and Justice is Neil Rennick. The direct reporting line for a Director is to their portfolio DG but they also report directly to the Permanent Secretary and to

Ministers. The direct reporting line for Deputy Directors is to Directors but they may also report directly to Ministers. Just as Ministers are accountable to Parliament, civil servants are accountable to Ministers. DG Education and Justice has responsibility for education (including childcare) and advanced learning in Scotland, as well as the justice system and the safety of communities in Scotland.

2. Between 1 January 2020 and 22 June 2022, the specified period covered by this statement, DG Education and Justice was split into six directorates. Each directorate was led by a Director and split into divisions, headed up by Deputy Directors. Within each division there are a number of units who led on broad policy areas. During the specified period, DG Education and Justice included:

- Directorate for Children and Families
- Directorate for Early Learning and Childcare
- Directorate for Justice
- Learning Directorate
- Directorate for Advanced Learning and Science
- Directorate for Safer Communities.

3. To support the development of a national policy framework with new national bodies to enable the delivery of education in schools, the Education Reform Directorate was established in September 2021. A number of policy areas were transferred from the Learning Directorate to the Education Reform Directorate. As the Learning Directorate continued to be responsible for the pandemic response during the specified period and the issues covered by this request, it is referred to throughout this statement.

4. For the purposes of this request, the Directorates for Early Learning and Childcare, Learning, Advanced Learning and Science, and the Directorate for Children and Families (DCAF)

were responsible for education policy and delivery. As a result, this statement relates to those four directorates only. A full list of policy areas that each directorate has responsibility is provided [NR6/001-INQ000182821].

#### Directorate for Early Learning and Childcare

5. During the specified period, the Directorate for Early Learning and Childcare was responsible for ensuring that children, families and their communities were enabled to reach their full potential through access to high quality and nurturing early learning and all-age childcare experiences.

6. The Directorate's key responsibilities included:

- Delivery of the 1,140 hours expansion of funded early learning and childcare
- Supporting the Early Learning and Childcare sector to deliver a high-quality early learning and childcare experience for children
- Developing policy related to future provision, including school age childcare.

#### Learning Directorate

7. Prior to the changes noted in paragraph 3, during the specified period covered the Learning Directorate was responsible for most aspects of school education policy, across four divisions:

- Curriculum, Qualifications and Gaelic
- Improvement, Attainment and Wellbeing
- Workforce, Infrastructure and Reform
- Education Analytical Services.

8. The key responsibilities included:

- Improving the lives of children and young people in Scotland through education, striving to achieve excellence and equity in an effective and accessible school system and wider learning environment, including learning through the quality implementation of Curriculum for Excellence
- Teaching through the recruitment of a workforce with the right ambition, skills and motivation; leadership in schools, communities and nationally
- Infrastructure through access to the right schools and digital technology to support learning and teaching.
- Performance through the implementation of a system that focuses on improvement, innovation and transfer of good practice.

#### Directorate for Children and Families (DCAF)

9. During the specified period, the key responsibilities of DCAF were advising Scottish Government Ministers on policy for children's rights and wellbeing (including Getting It Right for Every Child and the United Nations Convention on the Rights of the Child (UNCRC) Incorporation), care and justice, early years, child and maternal health.

10. The Director for Children and Families also had senior management responsibility and oversight for the Office of the Chief Social Work Adviser. The Chief Social Work Adviser (CSWA) provides professional expertise to Scottish Government Ministers and the Director for Children and Families on social work services and practice across children and families, adult social care and justice social work. The CSWA also oversaw the development and regulation of the social services workforce including sponsorship responsibility for the Scottish Social Services Council (SSSC).



11. DCAF's overall role during the pandemic was to ensure the interests of children, young people and families were taken into account in the pandemic response, and in particular those children, families and carers in Scotland in the most vulnerable situations.
12. DCAF had policy responsibility for ensuring the safe and effective operation of the Children's Hearings System, resilience and contingency plans for the five secure care providers in Scotland and those within Young Offender Institutions.
13. DCAF supported the Scottish Government's Covid-19 Advisory Group including through membership of the Advisory Sub-Group on Public Health Threat Assessment and Advisory Sub-Group on Education and Children's Issues.
14. DCAF set up the Children and Families Collective Leadership Group (CLG) to bring together national and local government and other partners across children and families services, health, education, justice, and the third sector to review data, intelligence, research and policy to identify and respond to immediate concerns for children, young people and families with vulnerabilities during the pandemic. CLG was co-chaired by DCAF and SOLACE (Society of Local Authority Chief Executives and Senior Managers) representatives. As a crucial part of its decision making, CLG developed an action plan focused on 10 priorities, including improving access to services, child protection, tackling domestic abuse, supporting care leavers and workforce resilience. CLG was operative from May 2020 until November 2022. All documentation related to CLG, such as agendas, minutes and meeting papers, have been provided to the Inquiry under general disclosure.

## Directorate for Advanced Learning and Science (ALS)

15. The Directorate for Advanced Learning and Science (ALS) was responsible for tertiary education policy (Higher and Further Education), and Community Learning and Development.

16. Key policy areas included but were not limited to:

- Student support (including Students Awards Agency Scotland, SAAS), financial student support and student equality and well-being.
- Higher and Further Education sectoral governance and funding
- National policies on student accommodation
- Community learning and development
- University research
- International students and Higher and Further Education international policy
- Chief Scientific Advisor
- Widening access
- Funding of science centres.

17. ALS also had responsibility for sponsorship of the Scottish Funding Council (SFC), policy responsibility for the Scottish Credit and Qualifications Framework Partnership, and funding responsibility for the funding of the accreditation function of the SQA. ALS Directorate worked with the SFC in a number of areas including sectoral funding (including funding allocations to the Further and Higher education sectors for which SFC is responsible), further education financial student support and monitoring of institutions' performance and sustainability.

## Business continuity

18. The Scottish Government's business continuity policy requires all

core Scottish Government directorates to develop, implement and maintain a business continuity plan which minimises the effect that any significant incident, failure or disruption has on its ability to conduct its business and maintain delivery of its essential functions and services. The business continuity plans identified and prioritised critical services, identified and recorded the impact of the loss of or disruption to these services, and planned to ensure critical services can continue following a disruption. These plans were put in place to respond to any disruption or emergency and allow the continued delivery of services.

19. The Justice Directorate had an existing Directorate Business Continuity Plan in place prior to the pandemic. The purpose of this plan is to minimise the effect that any significant incident, failure or disruption has on the ability to conduct business and to maintain the delivery of essential functions and services. The plan therefore documents the processes to be undertaken in the event of an incident affecting normal business operations. It includes the prioritisation of business-critical tasks, roles and responsibilities in each Division within the Directorate and inter-dependencies with other Scottish Government areas and justice partners with associated communications plans. The Directorates Incident Management Team (IMT), comprising the Director of Justice, Deputy Directors and Business Support Unit met and tested the plan on 4 March 2020. By 13 March 2020, the IMT met to specifically consider the accelerating threat of Covid-19 and to prioritise and consider the business-critical areas of work and impacts on staffing.

20. The Directorate for Early Learning and Childcare has had a Business Continuity Plan since October 2020 [NR6/002-INQ000182822]. This plan has been reviewed and updated by the Senior Leadership Team on a regular basis. The Early

Learning and Childcare Directorate did not have any other specific plans or responsibilities in relation to an emergency response.

21. Guidance on infection prevention and control (IPC) in childcare settings (day care and childminding settings) was developed in 2011. This guidance was later revised in 2018. It was developed by the Scottish Health Protection Network (SHPN) Guidance Group, which comprised of key organisations including, but not limited to, Public Health Scotland, the NHS, the Care Inspectorate, Education Scotland, the Scottish Pre-School Play Association (SPPA), the Scottish Childminding Association (SCMA) and the National Day-Care Nurseries Association (NONA).
22. The IPC guidance set out the role of the Care Inspectorate in monitoring good practice as part of their scrutiny responsibility of the services registered and regulated by the Care Inspectorate, under the Public Services Reform (Scotland) Act 2010. The guidance also emphasised the duty of care on early years setting providers and staff working in these settings to provide a safe environment for children, as well as their obligation to comply with the legal requirements for children's care services and the National Care Standards.
23. Regulation 4(1)(d) within The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 require the provider of a "care service" (which includes Day Care of Children Services in terms of the Public Services Reform (Scotland) Act 2010), to "make proper provision for the health, welfare and safety of service users" (regulation 4(1)(a)) and "where necessary, have appropriate procedures for the prevention and control of infection".

24. Officials in the Directorate for Early Learning and Childcare had well established communication channels with regulators, in particular the Care Inspectorate, to be kept informed of emerging intelligence and data which could be adapted for emergency situations.

25. The Learning Directorate has had a Business Continuity Plan since 2019. This plan has been reviewed and updated by the Senior Leadership Team on a regular basis. A copy of the current Business Continuity Plan has been provided [NR6/003-INQ000182823], the version from early 2020 is no longer available, as previous versions have been overwritten as the plan was updated.

26. The Learning Directorate had certain responsibilities for schools' resilience in partnership with Local Authorities and Scottish Government Resilience Room (SGoRR) colleagues. These included contributing when required to any national-level response to issues including, but not limited to, influenza pandemics, that impacted schools. In this role, Learning Directorate was involved in work prior to the Covid-19 pandemic to consider resilience arrangements in the event of an influenza pandemic. The Scottish Risk Assessment referenced the scientific evidence base reviews underpinning the UK Influenza Pandemic Preparedness Strategy (which was published in 2011 and further updated in 2014) in relation to the impact of school closures on an influenza pandemic. Flowing from that, work was undertaken by the Learning Directorate to contribute to draft guidance for local resilience planners (coordinated by SGoRR) on pandemic influenza, which included draft advice on the approach to school closures. The Learning Directorate had also contributed to work conducted via the Scottish Negotiating Committee for Teachers (SNCT) that had set out the changes

that would apply to teachers' terms and conditions in the event of a swine flu pandemic. This provided a helpful basis for subsequent work to agree emergency changes to terms and conditions during the Covid-19 pandemic.

27. The Learning Directorate was also involved in the development of education related provisions in the draft Influenza Pandemic Bill which was in preparation (led by Health colleagues) during the second half of 2019. The draft Bill was to be unpublished and held in reserve if needed to help deal with a flu pandemic. The draft provisions in the Bill informed the development of the Scottish provisions within the Coronavirus Act 2020.

28. The Advanced Learning and Science Directorate maintained a Business Continuity Plan during the specified period. This plan was reviewed and updated by the Directorate Management Team (DMT) on a regular basis. A copy of the 2020 Business Continuity Plan has been provided [NR6/004-INQ000182824].

#### Responsibilities during the pandemic

29. During the specified period, DG Education and Justice continued to have responsibility for education, early learning and childcare, and advanced learning, for the people of Scotland. The focus during this period was to support the wider public health measures required to keep the population safe whilst ensuring, as far as possible, the continued delivery of early learning and childcare, education and advanced learning. This included providing advice to Ministers and the relevant governance advisory groups on the measures needed to respond appropriately to the pandemic, ensuring the delivery of early learning and childcare and education, ensuring the wellbeing of children and young people, and to implement the necessary mitigations in these settings, to ensure the safety of staff, pupils,

students/learners and children throughout. Over the course of the pandemic, the Scottish Government developed a 'four harms' approach which was instrumental in assessing the risks and benefits of proposed interventions, and to informing advice to ministers on the pandemic response.

30. In addition to this, the Learning Directorate and Directorate for Early Learning and Childcare ensured that robust advice underpinned Scottish Government policy and ministerial decisions to ensure there was as much continuity of learning and care for children and young people as possible during the pandemic. The four harms approach was critical to providing a balanced assessment of the available evidence and advice. This work included: development of a range of bespoke new Covid-19 safety guidance for early learning and childcare and education settings, the establishment of the Covid-19 Education Recovery Group (CERG) to provide advice on education policy and delivery to ministers and local government leaders in the context of the response to the Covid-19 pandemic, and the establishment of the Advisory Sub-Group on Education and Children's Issues. The terms of reference, membership, agendas, minutes and papers (which includes any advice or recommendations made by the Advisory Sub-Group on Education and Children's Issues) have been provided to the inquiry under general disclosure.

31. Scottish Ministers used their powers under section 38(2) and part 2 of schedule 17 of the Coronavirus Act 2020 to give ten Educational Continuity Directions (ECDs) to education authorities in respect of the schools and early learning and childcare (ELC) settings under their management. ECDs were not subject to parliamentary procedure. Copies of the ECDs have been provided to the Inquiry as part of general disclosure.

32. ECDs and accompanying guidance were in force in two phases - the first from May 2020 to August 2020 and the second from late December 2020 to early April 2021. ECDs were subject to review every 21 days. Where new measures were needed, or removal of measures was required, the practice was that a new ECD was issued. In their decision making about the measures to be included in the ECDs, the Scottish Ministers took the advice of CERG.

#### Additional responsibilities during the pandemic

33. Additional responsibilities taken on by teams within the Learning Directorate and Directorate for Early Learning and Childcare, usually working in close partnership with colleagues in Public Health Scotland and other key policy areas, included:

- Advice in response to the Covid-19 pandemic in schools and early learning and childcare, school age childcare and childminding settings
- Monitoring the impact of the Covid-19 pandemic on children and young people
- Monitoring attendance at early learning and childcare and other educational settings
- Advice on closing/reopening schools
- Advice on the development of alternative models for certification of learners undertaking national qualifications
- Advice on closure and reopening of early learning and childcare, school age childcare and childminding services
- Advice on Covid safety and IPC guidance with regard to the running of early learning and childcare, school age childcare and childminding services (taking account of the wider public health regulations and guidance in place at the time)



- Developing and updating sectoral guidance including public health messaging on managing Covid-19 in schools and early learning and childcare, school age childcare and childminding services
- Increased focus on the development and implementation of remote learning
- Development of system-facing guidance for pupils, parents/carers and teachers on remote learning meant for young people
- Providing the secretariat to the Covid-19 Education Recovery Group
- Providing the secretariat to the Advisory Sub-group on Education and Children's Issues
- Providing the secretariat to the Critical Childcare and Early Learning and Childcare group
- Providing the secretariat to the Covid-19 Reference Group (CRG) (for the early learning and childcare sector)
- Developing the Education Recovery: Key Actions and Next Steps document
- Advice on Contingency Planning and Outbreak Management
- Development and administration (with UK Government support) of asymptomatic testing programmes
- Developing financial support packages for private, independent, voluntary and childminding providers of early learning and childcare
- Supporting communications about key Covid-19 safety messages to staff in the sector, including promoting vaccine uptake
- Engagement with the UK Government (Department for Health and Social Care and Department for Education) in the development of the Scottish provisions within the UK Coronavirus Act 2020
- The development and issuing of directions which provided legal

underpinning for the actions taken by local authorities in schools and ELC settings to mitigate the effects of the pandemic and maintain educational continuity.

34. As part of the emergency response measures taken in relation to Covid-19, the Directorate for Early Learning and Childcare was responsible for:

- Covid-19 response and recovery (including drafting Covid-19 safety guidance to the sector, preparing guidance on the provision of critical childcare and informal childcare, informing decisions on the closure and re-opening of early learning and childcare, school age childcare and childminding settings when public health measures were in place)
- Quality improvement, inspection and scrutiny activity, including liaising with the Care Inspectorate and Education Scotland
- Sector sustainability and workforce (including running a number of funds providing financial support to providers to address the impacts of the pandemic)
- Strategy, communications and finance (including through Provider Notices to all childcare providers in Scotland with regard to Covid safety guidance and on vaccination).

35. As part of the emergency response measures taken in relation to Covid-19, the Learning Directorate was also responsible for:

- Education recovery (re-opening of schools)
- Curriculum, qualifications and Gaelic
- Improvement, attainment and wellbeing
- Workforce, infrastructure and reform
- Covid-19 Education Strategy and recovery
- Deputy Director supporting the Sub-group of the Covid-19 Advisory Group looking at education and children's interests

- Education Analytical Services.

36. As part of the emergency response measures taken in relation to Covid-19, the Advanced Learning and Science Directorate continued to be responsible for Higher Education, Further Education and Community Learning and Development (CLO) policy and support, all of which are predominantly devolved. However, contact with the UK Government and other devolved administrations took place on a regular basis at both official and Ministerial level. Internal directorate resources were initially redirected to ensure effective engagement with sector stakeholders, to ensure funding continued to flow to institutions and students, and to develop advice and guidance to protect staff and learners.

37. In addition, the Advanced Learning and Science Directorate had responsibility for:

- Student, staff and worker wellbeing (financial and other)
- Institutional funding and financial sustainability
- Supporting economic and broader society recovery
- Supporting international standards.

38. In 2020, the Advanced Learning and Science Directorate provided resource to support the central Covid-19 response and support the delivery of the Ministerial Leadership Group. Directorate resources were supplemented progressively throughout 2021, during which time a specific Covid-19 Response Division was created. This Division subsequently established and supported the stakeholder Advanced Learning Covid-19 Recovery Group (CRG) and the Covid-19 Advisory Sub-Group on Universities and Colleges.

39. The focus of the ALS Directorate during the period was to support the wider public health measures, whilst ensuring finance flowed to institutions and individuals and, as far as possible, the continued delivery of critical learning. This included providing advice to Ministers and the relevant governance advisory groups on the measures needed to respond appropriately to the pandemic, ensuring the delivery of tertiary education and to implement the necessary mitigations in these settings, to ensure the safety of staff and students/learners throughout.

40. The Advanced Learning and Science Directorate's Covid Recovery Division was also responsible for reviewing and updating Higher and Further Education sector guidance and oversaw the process of scaling back the Advanced Learning and Science Directorate response work on Covid-19 in the third quarter of 2022 in line with reduced threat and relaxation of wider societal Covid-19 restrictions. Ad hoc short life working groups were also established to help the sector and learners emerge and recover from the pandemic, for example, work to fund and recover from lost learning.

41. A table of Senior Civil Servants (SCS) in post for the timescale specified is set out below:

Directorate for Early Learning and Childcare

<b>Name</b>	<b>Role</b>	<b>Key Responsibilities / Time in post</b>
Alison Cumming	Director	SCS lead for pandemic response for ELC and School Age Childcare (SACC) <ul style="list-style-type: none"> <li>• Interim Director (March 2020 - March 2021)</li> <li>Substantive Director (March 2021 - October 2022)</li> </ul>
Eleanor Passmore	Deputy Director	SCS lead for pandemic response <ul style="list-style-type: none"> <li>• Deputy Director: Early Learning and Childcare, July 2021 to present</li> <li>• Prior to July 2021 ELC Division was headed by a C2.</li> </ul>
Kate Smith	Deputy Director	SCS lead for pandemic response. <ul style="list-style-type: none"> <li>• Deputy Director: School Age Childcare, April 2022 to present</li> <li>• Prior to April 2022 SACC Division was headed up by a C2.</li> </ul>

#### Directorate for Learning

<b>Name</b>	<b>Role</b>	<b>Key Responsibilities / Time in post</b>
Graeme	Director of Learning	Final clearance on advice to Ministers

<b>Name</b>	<b>Role</b>	<b>Key Responsibilities / Time in post</b>
Logan		to support decision making for Learning Directorate during the specified period
Andy Drought	Deputy Director for Workforce, Infrastructure and Reform	SCS lead for coordinating early pandemic response, closing/opening of schools and development of guidance. Oversaw development and administration of schools' asymptomatic testing programme for Learning Directorate
Sam Anson (to March 2021) Alison Taylor from March 2021 onwards	Deputy Director for Improvement Attainment and Wellbeing	SCS lead for pandemic response in relation to Scottish Attainment Challenge, Pupil Equity Fund and National Improvement Framework. Oversaw the secretariat for CERG and, more latterly, the Advisory Sub-Group on Education and Children's Issues
Mick Wilson (to Nov 2021) / Jennifer Bradley from Jan 2022 onwards	Deputy Director for Education Analysis	SCS lead for the development and delivery of analytical work in support of the education and children's services response to Covid-19, including monitoring and reporting of the impact on children, young people and the provision of education services

<b>Name</b>	<b>Role</b>	<b>Key Responsibilities / Time in post</b>
Malcolm Pentland (to Nov 2021) Laura Murdoch (from Feb 2022 onwards)	Deputy Director for Curriculum, Qualifications and Gaelic	SCS lead for pandemic response in relation to qualifications, curriculum, outdoor learning provision/access, subject specific guidance within the Broad General Education (with Education Scotland), provision of remote learning (with Education Scotland) and overall parent/learner engagement policy
Andy Drought and Sam Anson	Deputy Director for Covid- 19 Education Strategy and Recovery Division (Joint)	From March 2021, the roles of Deputy Director for Workforce, Infrastructure and Reform and the Deputy Director for Improvement, Attainment and Wellbeing merged to establish new Division called the Covid-19 Education Strategy and Recovery Division. They were SCS leads for coordinating advice to Ministers on the ongoing response to the pandemic and education recovery
Katherine Peskett (March 2020 – November 2020)	Deputy Director supporting the Covid-19 Advisory Sub-group on Education and Children's Issues	SCS lead on Covid-19 Advisory Sub-Group on Education and Children's Issues, Covid-19 Hubs and strategy projects

<b>Name</b>	<b>Role</b>	<b>Key Responsibilities / Time in post</b>
Elizabeth Morrison (July 2020 – July 2021)	Interim Deputy Director	SCS lead for pandemic response in relation to education recovery, health and education programme, guidance on education, digital learning and teacher education and workforce planning strategies

Directorate for Children and Families (DCAF)

<b>Name</b>	<b>Role</b>	<b>Key Responsibilities</b>
Michael Chalmers	Director for Children and Families (Seconded as Director, Shielding, Health and Social Care Directorate from 23 March - September 2020)	Responsible for DCAF policy areas and decision making described above. Co-Chair of the Covid-19 Children and Families Collective Leadership Group from September 2020 until November 2022
Iona Colvin	Chief Social Work Advisor (April 2017 – to present. Acted as Interim Director for Children and Families as detailed below).	Professional advisor on social work services and practice across children and families, adult social care and justice social work. Co-Chair of the Covid-19 Children and Families Collective Leadership Group from May 2020 until August 2020. Member of the Advisory Sub-Group on Public Health Threat Assessment and Advisory Sub-Group on Education and Children's Issues



Name	Role	Key Responsibilities
Iona Colvin	Interim Director for Children and Families (23 March 2020 – September 2020)	
Name Redacted	Deputy Chief Social Work Advisor (November 2018 – February 2021)	
Joanna MacDonald	Deputy Chief Social Work Adviser (April 2021 – present)	
Lesley Sheppard	Deputy Director Care, Protection and Justice (October 2017 – March 2020)	
Bill-Scott Watson	Deputy Director (temporary appointment between May 2020 and December 2021) for Care, Protection and Justice	Provided advice to Ministers on Children in Care (with the Care Inspectorate); Looked After Children; Youth Justice and Children's Hearings
Lesley Sheppard	Deputy Director Children's Rights, Protection and Justice (October 2020 – March 2022)	
Tom McNamara	Interim Deputy Director Children's Rights, Protection and Justice (April 2022 – December 2022)	
Scott Bell	Deputy Director The Promise (September 2020 – September 2021)	

Name	Role	Key Responsibilities
Bill Scott-Watson	Deputy Director Strategy, GIRFEC (Getting it Right For Every Child) and Promise (September 2020 – September 2021)	
Jane Moffat	Deputy Director Strategy, GIRFEC (Getting it Right For Every Child) and Promise (September 2021 – January 2024)	
Gavin Henderson	Deputy Director Strategy, Workforce, and Keeping the Promise (August 2021 – Present)	
John Froggatt	Deputy Director, Improving Health and Wellbeing (November 2009 – October 2020)	Provided advice to Ministers on baby, infant and child health issues
Innes Fyfe	Deputy Director Improving Health and Wellbeing (August 2020 – October 2020)	
Mairi Macpherson	Deputy Director Creating Positive Futures (September 2018 – October 2020)	

Directorate for Advanced Learning and Science (ALS)

<b>Name</b>	<b>Role</b>	<b>Key Responsibilities / Time in post</b>
Lorna Gibbs	Interim Director	Final clearance on advice to Ministers to support decision making for ALS Covid-19 Response: February 2020 to April 2021
Stephen Pathirana and Katherine Peskett	Director (Joint)	Final clearance on advice to Ministers to support decision making for ALS Covid-19 Response: April 2021 -June 2022
Linda Pooley	Deputy Director	Delegated clearance on decision making for ALS Covid-19 Response: January 2020 - February 2021
Roddy MacDonald	Deputy Director for Education Analysis	Delegated clearance responsibilities on Covid-19 Response: January 2020 - February 2021
Craig Robertson	Interim Deputy Director	Delegated clearance on decision making for ALS Covid-19 Response as Head of Covid-19 Response Division: February 2021 -April 2022
David Robb	Deputy Director	Chief Executive SAAS with delegated clearance decision making for ALS Covid-19 Response: January 2020 - March 2021
Lauren McNamara	Interim Deputy Director	Chief Executive SAAS with delegated clearance decision making for ALS Covid-19 Response: March 2021 -April 2022

## Cabinet Secretaries and Ministers

42. The Cabinet Secretaries who held portfolio responsibility during the specified period were:

Cabinet Secretary for Education and Skills

- John Swinney (May 2016 - May 2021) (also Deputy First Minister)
- Shirley-Ann Somerville (May 2021 - March 2023).

43. The Improving Health and Wellbeing Division in the Directorate for Children and Families (DCAF) reported to the following Cabinet Secretary:

Cabinet Secretary for Health and Sport

- Jeane Freeman (June 2018 - May 2021)
- Humza Yousaf (May 2021 - March 2023).

44. The Ministers with responsibility for Early Learning and Childcare (ELC) and DCAF during the specified period were:

Minister for Children and Families

- Maree Todd (June 2018 - May 2021)
- Clare Haughey (May 2021 - March 2023).

45. The Improving Health and Wellbeing Division in DCAF reported to the following Minister:

Minister for Public Health, Sport and Wellbeing

- Joe Fitzpatrick (June 2018 - December 2020)
- Mairi Gougeon (December 2020 - May 2021).

46. Throughout the specified period, the Learning Directorate engaged directly with John Swinney – Deputy First Minister and Cabinet

Secretary for Education and Skills (March 2020 - May 2021) and Shirley-Ann Somerville – Cabinet Secretary for Education and Skills (May 2021 - March 2023).

47. The Ministers with responsibility for the Directorate for Advanced Learning and Science (ALS) during the specified period were:

- Minister for Further Education, Higher Education and Science
- Richard Lochhead (September 2018 - March 2021)  
Minister for Further Education and Higher Education, Youth Employment and Training
  - Jamie Hepburn (May 2021 - March 2023).

48. Officials within all four directorates provided advice to Ministers on policies, programmes and interventions, in line with the Civil Service Code, seeking expert and public health advice. Officials also provided the secretariat support and leadership on a number of governance and advisory groups. Officials also represented their respective sectors and policy responsibilities at wider Scottish Government Covid-19 related groups.

#### Advice and decision making

49. Officials in the Directorate for Early Learning and Childcare, the Learning Directorate and the Directorate for Advanced Learning and Science provided advice to Ministers and the relevant governance groups (CERG/CRG and Advisory Sub-groups) to support consideration and decision making on key issues.

50. Central to the decision-making process was the expert advice of the Chief Medical Officer (CMO), Deputy Chief Medical Officers (DCMO) and Public Health Scotland (PHS). The CMO was responsible for providing policy advice to Scottish Ministers on

matters relating to public health. PHS supported the decision-making process as part of its role in responding to Scotland's health challenges by providing data and intelligence on the spread, prevalence and impact of Covid-19, and advice on the pandemic response. The decisions taken through the wider Scottish Government structures established to respond to the pandemic were consistent with the advice and evidence provided by CMO, DCMO, PHS, clinicians and public health experts.

51. In terms of the wider structures established to respond to the pandemic, the publication of the 'Coronavirus (Covid-19): Framework for Decision Making' in April 2020 [NR6/005-INQ000369689] and the introduction of the four harms approach in December 2020 were a significant part of the process officials followed in providing advice to Ministers.

52. At a local level, senior officials (Directors and Deputy Directors) had delegated authority to make decisions about the delivery of budgets, projects, and programmes but not to make key decisions relating to the pandemic response or any significant change in policy or approach.

53. During the pandemic, the main areas which the Directorate for Early Learning and Childcare and the Learning Directorate provided advice on were:

- Advice, information and evidence relating to asymptomatic testing for pupils and staff working/learning in schools and early learning and childcare settings.
- Critical childcare provision for key workers.
- Guidance to local authorities on how to define key workers.
- Guidance on the provision of informal childcare.
- Proposed legislation as it related to education and early learning and

childcare.

- Engagement and communication with key stakeholders on Covid safety measures, including the implications of wider public health policy. (e.g. changes to policy on social distancing or self-isolation)
- School and early learning and childcare settings closures.
- Advice on the development of an alternative certification model for learners undertaking national qualifications.
- Workforce concerns. (including sickness absence rates and self-isolation)
- Remote learning.
- Covid-19 guidance for schools and early learning and childcare settings.
- The impact on vulnerable groups.
- Return to schools and reopening of early learning and childcare settings.
- Other non-pharmaceutical measures in schools and early learning and childcare settings, including physical distancing and wearing masks.
- The cancellation of exams.
- Attainment.
- In-person learning for vulnerable children and children of key workers.
- CO2 monitoring/ventilation in schools and early learning and childcare settings.
- Communications efforts to support vaccine up-take amongst staff.
- Financial support for the early learning and childcare sector.  
(Directorate for Early Learning and Childcare only)

54. During the pandemic, the main areas which the Directorate for Advanced Learning and Science provided advice on were:

- Identifying possible public health risks which emerge or may impact on the Higher Education/Further Education/Community Learning and Development (CLD) sector.
- Specific support which may be required for students, institutions,

representative bodies and student accommodation providers in response to the Covid-19 pandemic.

- Input into broader Scottish Government Covid-19 guidance and, development and maintenance of Education/Further Education/CLD sector specific guidance, to ensure the safe return to in-person learning for student, staff and the wider community. This included providing advice to Ministers on how wider Scottish Government Covid-19 guidance interacted with the sector.
- Supporting ministerial and official engagement with stakeholders to maintain the partnership approach to developing sectoral Covid-19 guidance. Throughout the Covid-19 pandemic, education /Further Education/CLD sectoral guidance was developed through a partnership approach with colleges, universities and CLD providers and unions. The sector agreed to comply with the guidance. (in addition to complying with legislative requirements and wider national guidance)
- Development and provision of advice to Ministers on what outward messaging should be in place in relation to student travel at the beginning and end of terms.
- Working with Scottish Government testing policy colleagues, PHS and institutions to put in place appropriate measures to allow for testing of students and staff.

55. The Directorate for Early Learning and Childcare was responsible for providing advice and guidance to local authorities, and to private, voluntary, independent (PVI) childminding services, to support the continued delivery of early learning and childcare, school age childcare and childminding during the pandemic. This was achieved by engaging with representatives from local authorities, PVI services, childminding services, inspectorate bodies and unions, including through the relevant stakeholder groups – Critical Childcare and Early Learning Childcare (CCELC) and CRG, and through the publication of Covid-19 guidance.



56. The Learning Directorate was responsible for providing advice and guidance to local authorities to support the continued delivery of school education during the pandemic, including in relation to how they should approach the provision of learning to children of key workers and vulnerable children. This was achieved by engaging with local authorities through the relevant stakeholder groups (CERG and Advisory Sub-group) and through the publication of the Covid-19 schools guidance.

57. Within the Directorate for Early Learning and Childcare, Learning Directorate and Directorate for Advanced Learning and Science, the Education Analytical Services Division had responsibility to lead the development and delivery of analytical work in support of the education and children's services in response to Covid-19, including monitoring and reporting of the impact on children, young people, and the provision of education services.

58. Several bodies were important points of contact for the Directorate for Early Learning and Childcare and the Learning Directorate during the pandemic, the details of these bodies have been listed below. These bodies were important points of contact because they were all either involved in, or had an interest in, the delivery of education and associated services and/or the provision of clinical or public health advice relevant to those services:

- Convention of Scottish Local Authorities (CoSLA)
- Association of Directors of Education in Scotland (ADES)
- Scottish Qualifications Authority (SQA)
- Education Scotland
- Association of Headteachers and Deputies in Scotland
- School Leaders Scotland
- National Parent Forum of Scotland (NPFs)

- The Scottish Council for Independent Schools (SCIS)
- General Teaching Council for Scotland (GTCS)
- Educational Institute of Scotland (EIS)
- UNISON
- Scottish Youth Parliament
- National Association of Schoolmasters/Union of Women Teachers (NASUWT)
- Scottish Secondary Teachers' Association
- Care Inspectorate
- Public Health Scotland
- Improvement Service
- Scottish Futures Trust
- Early Years Scotland
- Scottish Out of School Care Network (SOSCN)
- Care and Learning Alliance (CALA)
- National Day Nurseries Association (NONA)
- Scottish Childminding Association (SCMA).

59. The Directorate for Advanced Learning and Science engaged with the following bodies during the pandemic:

- Scottish Funding Council (SFC)
- Scottish Qualifications Authority (SQA)
- Skills Development Scotland (SDS)
- Student Award Agency Scotland (SAAS)
- Colleges Scotland
- College Development Network
- Universities Scotland, Universities UK and Universities UK international
- All Scottish universities and colleges
- Educational Institute of Scotland (EIS)
- University and College Union (UCU)
- National Union of Students Scotland (NUS)

- UNISON
- The Employers Association of Colleges Scotland
- Community Learning and Development Standards Council
- British Council
- Representatives of key CLO stakeholder groups
- National Health Service (NHS) National Services Scotland (NSS)
- Public Health Scotland (PHS)
- UK Department for Education
- Welsh Government
- Northern Ireland Executive.

#### Justice Directorates within Director General Education and Justice

There are two Directorates which are (i) Safer Communities Directorate and (ii) Justice Directorate.

#### Safer Communities Directorate

60. The Safer Communities Directorate is currently led by the Director, Donald McGillivray, and helps make our communities safer by ensuring high quality public services are available when they are needed.

61. At the beginning of 2020, the Directorate was led by Gillian Russell, with Joe Griffin taking over as Director in March 2020. He led the Directorate until March 2021 when Donald McGillivray took over. The Deputy Directors are shown in the table below:

<u>Safer Communities Directorate – Deputy Directors Name</u>	<u>Position</u>	<u>Date</u>
<u>Clare Hicks</u>	<u>Deputy Director - Police Division</u>	<u>January 2020 – May 2021</u>

<u>John Somers</u>	<u>Deputy Director - Police Division</u>	<u>August 2021 – April 2022</u>
<u>Jim Kerr</u>	<u>Deputy Director - Resilience Division</u>	<u>January 2020 – April 2021</u> <u>In April 2021 the Resilience Division was placed under the Directorate for Performance, Delivery and Resilience</u>
<u>Amy Wilson</u>	<u>Deputy Director - Justice Analytical Services</u>	<u>January 2020 – April 2022</u>
<u>Wendy Wilkinson</u>	<u>Deputy Director - Safer Communities Division</u>	<u>January 2020 – April 2022</u>
<u>Helen Nisbet</u>	<u>Deputy Director - Defence, Security and Cyber Resilience</u>	<u>January 2020 – April 2022</u>
<u>Matt Allan</u>	<u>Deputy Director Compliance Division</u>	<u>November 2020 – April 2022</u>  The Compliance Division was formed in November 2020 to support the Covid Safety & Compliance Programme. It became part of the Covid Coordination Directorate in 2021 and its formal work was completed on 31 March 2022.

62. The Directorate has key sponsorship roles of policing and fire services.

Specifically:

- It sets the strategic direction for policing in Scotland. Police Scotland is the independent single police force responsible for policing across the whole of Scotland. The Chief Constable of Police Scotland takes operational decisions independently of Ministers.

- It sponsors the Scottish Police Authority (SPA), the public body established to support and hold Police Scotland to account. The SPA is subject to scrutiny by a number of bodies, including the Scottish Parliament, Audit Scotland and His Majesty's Inspectorate of Constabulary in Scotland (HMICS).
- It has key roles in supporting the work of the Police Investigations and Review Commissioner (PIRC) and HMICS.
- It funds, monitors and sets the direction for the Scottish Fire and Rescue Service (SFRS) in their front line role.

63. In policy terms the Directorate:

- Ensures the police have the powers and capabilities to undertake their work to keep Scotland safe and plays a key role in managing police programmes, maintaining confidence and trust in policing, oversees the accountability arrangements in place through SPA to support railway policing in Scotland and the development of the new UK emergency services mobile communication network.
- Oversees the delivery counter terrorism strategy in Scotland and the response to any attack, works to minimise Scotland's vulnerability to, and capacity to rapidly recover from, cyber incidents.
- Co-ordinates Scottish Government for armed forces and veterans communities, supports Ministers in relation to wider defence and organised crime policy issues and represents Scottish Ministers' interests in international judicial co-operation, including extradition.
- Sets the direction for community safety policy nationally, working with partners and communities to create safer communities, targeting a reduction in intentional and unintentional harm through a focus on prevention and early intervention.

#### Justice Ministers

64. From 26 June 2018 to 20 May 2021 the Cabinet Secretary for Justice was Humza Yousaf MSP and from 27 June 2018 to

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

65. A complete list of Scottish Government Ministers, Senior Civil Servants, and Special Advisers (SpAds) who were in post during the specified time period is provided: [NR6/006 – INQ000131090].

#### Justice Directorate

66. During the specified time period the Justice Directorate had responsibility for policy related to the operation of civil and criminal courts, prisons, community justice services, and Family Law (including Marriage Ceremonies and Parental Rights).
67. During this time Neil Rennick was Director of Justice from January 2020 to November 2020. Stephen Pathirana and Katherine Peskett job shared the Director role from November 2020 to February 2021 on an interim basis. Neil Rennick returned as Director in March 2021 for the remainder of the period. An organogram for the present structure of the Directorate is provided: [NR6/007 – INQ000182897]. The Deputy Directors are shown in the following table.

#### Justice Directorate – Deputy Directors

<b>Name</b>	<b>Role</b>	<b>Date</b>
Gavin Henderson	Deputy Director Civil Law & Legal System	May 2018 - September 2020
Denise Swanson	Deputy Director Civil Law & Legal System	September 2020 - Present
Donna McKinnon	Deputy Director Community Justice	May 2018 - March 2020
Quentin Fisher	Deputy Director Community Justice	(Temporary promotion) April 2020 – June 2020
Catriona Dalrymple	Deputy Director Community Justice	June 2020 - July 2023
Willie Cowan	Deputy Director Criminal Justice	January 2020 – June 2022
Anna Donald	Deputy Director Criminal Justice	(March 2020 - September 2020 (temporary promotion) and July 2022 - Present (substantive))
Willie Cowan	Deputy Director Justice Transformation	August 2022 – May 2023

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

- Crown Office and Procurator Fiscal Service (COPFS) – Scotland’s independent prosecution service, headed by the Lord Advocate, Solicitor General (who are Ministers in the Scottish Government under section 44 of the Scotland Act 1998) and Crown Agent. COPFS is governed by an Executive Board.
- Scottish Courts and Tribunals Service (SCTS) - an independent non-ministerial public body providing administrative support to Scottish courts and tribunals and to the judiciary of courts, including the High Court of Justiciary, Court of Session, sheriff courts and justice of the peace courts, and to the Office of the Public Guardian and Accountant of Court. The SCTS Board is chaired by the Lord President, the most senior judge in Scotland.
- Scottish Prison Service (SPS) - an Executive Agency of the Scottish Government responsible for those who are committed to its care by the Courts and accountable to Scottish Ministers and, through them, to the Scottish Parliament.
- Community Justice Scotland – a non-departmental public body accountable to Scottish Ministers that provides advice to Ministers and local government leaders to strengthen how public services, third sector and other partners work together to prevent and reduce further offending.
- Scottish Legal Aid Board (SLAB) - a non-departmental public body responsible to Scottish Ministers, ensuring the administration and development of legal aid in Scotland.
- Scottish Parole Board - a tribunal non-departmental public body, independent of the Scottish Government, it ensures that those



prisoners who are no longer regarded as presenting a risk to public safety may serve the remainder of their sentence in the community on licence under the supervision of a supervising officer.

## The Justice Board

69. The Justice Board was established by the Scottish Government in August 2011 to bring together the Chief Executives and equivalent leaders of key organisations across the justice system. The Board meets monthly and the representative organisations are integral to the delivery of the 'Vision for Justice in Scotland' published in February 2022, provided: [NR6/008- INQ000182898]. and previously to the 'Justice Vision and Priorities' published in July 2017 [NR6/009 – INQ000597159]. The Board continued to meet during the pandemic and the collective leadership of the Board and the individual leadership of the Chief Executives of its respective organisations, has been central to the system responding successfully to Covid-19. The evolution of the Justice Board during the pandemic to provide a justice system-wide response to the pandemic is set out in the statement from Joe Griffin for Module 2A of the Inquiry dated 23 June 2023. This statement includes details on the establishment of the system-wide governance structures which were central to the system responding successfully to the pandemic. These structures included: the Criminal Justice Board; the RRT Programme Advisory Board; and the Justice Board Covid-19 Sub-Group and further details on these Groups is also provided in this Statement.

### Justice Board Membership

<b>Justice Board Members (Jan 2020 – April 2022)</b>	<b>Organisation</b>
Neil Rennick (and then Stephen Pathirana and Katherine Peskett)	Director of Justice (Co-chair)

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

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

70. The Justice Board Coronavirus (Covid-19) Sub-Group was established in March 2020 in response to the outbreak. The Sub-Group's purpose was to oversee and manage the collective justice system response to the virus and to inform the Scottish Government's Resilience response to the pandemic, in particular Resilience Situation Reports. The Sub-Group was focused on more immediate and practical issues than the senior-level Justice Board and Criminal Justice Board (CJB). The Terms of Reference for the Sub-Group is provided: [NR6/010 – INQ000571137].

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

- Scottish Government – Justice and Safer Communities
- Scottish Courts and Tribunals Service (SCTS)
- Crown Office and Procurator Fiscal Service (COPFS)
- Scottish Prison Service (SPS)
- Police Scotland
- Scottish Police Authority (SPA)
- Scottish Fire and Rescue Service (SFRS)
- Scottish Children’s Reporter Administration
- Scottish Legal Aid Board (SLAB)
- Risk Management Authority (RMA)
- Victim Support Scotland (VSS)
- Convention of Scottish Local Authorities (COSLA)
- Police Investigations and Review Commissioner (PIRC)
- Association of Scottish Social Workers
- Social Work Scotland / Midlothian Council
- Community Justice Scotland.

#### The Criminal Justice Board (CJB)

72. The CJB was established in April 2020 as a sub-board of the Justice Board to help to co-ordinate the Criminal Justice system’s strategic handling of the Covid-19 pandemic and to provide operational oversight of the subsequent Recover, Renew, Transform (RRT) Programme. From the outset, the focus of justice organisations was not just on the immediate response to the pandemic, but medium-term recovery and longer-term transformation. The Board met fortnightly and continues to do so. One of its key focuses at the start of the pandemic was establishing the collaborative RRT

Programme. The RRT Programme comprised of five project workstreams, each led by the relevant operational lead:

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

73. Each project workstream had a corresponding governance structure and project board. Delivery Plans for each workstream were developed and shared with the RRT Sub Group, a group comprising the Senior Responsible Owners (SROs) for each workstream. There were a number of Equality Impact Assessments (EQIAs) produced, provided [NR6/011 - INQ000597194], [NR6/012 - INQ000597195] and [NR6/013 - INQ000597196] for the RRT workstreams and these were owned by the operational lead organisations e.g. Police Scotland, SCTS. These EQIAs were used internally, including for consideration by the RRT Advisory Group. The Scottish Government usually only publishes EQIAs that it has commissioned so any decision to publish rests with the organisation itself. The operational leads for the RRT workstreams were: COPFS, SCTS, Police Scotland, Community Justice Scotland and SPS.

74. Membership of the CJB is set out below:

Name	Organisation
Neil Rennick (and then Stephen Pathirana and Katherine Peskett)	Director of Justice
Will Kerr and then Kenny MacDonald	Deputy Chief Constable, Police Scotland
Eric McQueen	Chief Executive, SCTS

Name	Organisation
David Harvie and then John Logue	Crown Agent and Chief Executive, COPFS
Teresa Medhurst	Chief Executive, SPS
Colin Lancaster	Chief Executive, SLAB
Karyn McCluskey	Chief Executive, Community Justice Scotland

#### Recover, Renew, Transform (RRT) Programme Advisory Group

75. To support governance arrangements, the RRT Programme Advisory Group was established to help to deliver a person-centred perspective to the CJB's work, aimed at ensuring that the views, requirements and rights of the people experiencing the system were built into the planning and implementation of the programme. The Advisory Group's advice was most frequently shared with the CJB in advice papers which the Group produced for this purpose and an advice paper to the CJB, dated February 2021, is exhibited at [NR6/014-INQ000182899]. This paper was also considered by the CJB's RRT SRO Group, who provided advice to the CJB in response to the paper in April 2021. Advisory Group advice papers were also shared and considered by the CJB in July and August 2021. As agreed by the CJB in August 2021, the Advisory Group's focus from this date until dissolution was on three key areas (i) The RRT programme (ii) Implementation of Lady Dorrian's recommendations on the management of sexual offence cases and (iii) the development of the new Justice Strategy. The Advisory Group also engaged with and provided advice direct to the CJB's RRT SRO Group. In addition, via its Chair, David Strang, the Group were represented at the RRT roundtable with the Cabinet Secretary for Justice, justice partners and relevant MSPs, which was held on 1 March 2021 to consider the strategic approach to recover,

modernise and reform the justice system in Scotland.

76. As detailed in the Advisory Group's agreed Terms of Reference (which are included in Annex A of exhibit NR6/014-INQ000182899), the group met monthly and on a virtual basis. The secretariat for the Group was provided by Justice Directorate officials. The Group was scheduled to operate until April 2021, and due to the strong engagement and value provided, this was extended to December 2021.

77. A record was kept of all agendas, papers and actions from each CJB meeting. The RRT Advisory Group was a regular standing item under the over-arching RRT Programme, for consideration at each CJB meeting. The Deputy Director for Criminal Justice, Anna Donald, was the Scottish Government lead for the Advisory Group and attended the Criminal Justice Board meetings to maintain ongoing engagement with both the Board and Group. The Advisory Group maintained agendas and notes of its meetings.

78. The CJB considered all advice it received from the RRT Advisory Group as did the SRO Group. For example, in response to the RRT Advisory Group paper dated February 2021 [NR6/014 – INQ000182899], the CJB responded with a paper in April 2021, please see paragraph 75 of this Statement. CJB actions relating to the RRT Advisory Group were captured via the CJB's action tracker and through the attendance of the DD for Criminal Justice, who was also a member of the RRT Advisory Group.

79. The remit of the Group was to provide non-binding advice to the CJB on the RRT programme and linked activity where relevant, and was as follows to:

- Provide information on and insight into the varied rights and needs of those impacted by the system – i.e. those experiencing the justice

system as a suspect/accused/prisoner/victim/witness and their families and supporters.

- Where possible, ensuring that the voices, views and lived experiences of those impacted by the system are heard and recognised, and advising as to how this is best achieved.
- Highlight the real and potential consequences of the RRT programme on those impacted by the system, including differential impacts and those specifically related to protected characteristics.
- Inform equality and human rights impact assessments across the programme and comment on further evaluation/monitoring requirements.
- Provide guidance on mitigations required and trauma-informed approaches that could be adopted.

#### 80.RRT Programme Advisory Group Membership:

<b>Organisation</b>	<b>Name</b>
Advisory Group Chair	David Strang (Independent)
Victim Support Scotland	Kate Wallace (Chief Executive)
Criminal Justice Voluntary Sector Forum	Tracey McFall (Chief Executive)
ASSIST	Ann Fehilly (Chief Executive)
Scottish Women's Aid	Marsha Scott (Chief Executive)
Families Outside (Scottish Council for Voluntary Organisations rep)	Nancy Loucks (Chief Executive)
Scottish Centre for Crime and Justice Research	Margaret Malloch, Senior Researcher (University of Edinburgh)
Judiciary	Kathrine Mackie (Ex- Sheriff)
Association for Real Change Scotland	Tony Bowman (Policy and Development Manager)

Organisation	Name
Fair Justice System for Scotland Group	Frank Crowe (Chair)
Children 1st	Mark Ballard (Director of Strategic Planning)
NHS Education Scotland	Dr [Name Redacted] (Clinical Psychologist and Head of NHS Trauma training Programme)
Law Society Scotland	Ken Dalling (Law Society President)

81. At the end of 2021, the RRT Programme transitioned to an interim Delivery Plan, still overseen by the RRT Sub Group (the SRO Group) under the oversight of the CJB, while partners considered how to reshape delivery building on the progress made by RRT but in a way that aligned with the long term outcomes articulated in the Vision for Justice 2022, published in February 2022 [NR6/008- INQ000182898]. The current Vision for Justice, as published in February 2022, provided [NR6/015 – INQ000597157] replaced the 2017 Justice Strategy, 'Justice Vision and Priorities – A just, fair, resilient Scotland', provided [NR6/016 – INQ000597158]. A final Delivery Report for the 2017 Justice Vision and Priorities was published in March 2021, provided [NR6/009– INQ000597159] The current vision sets out the Scottish Government's transformative vision for the Justice sector for this Parliamentary term (until 2026) and beyond.

82. A one-year delivery plan was published with the Vision for Justice in February 2022, highlighting the actions being taken forward in 2022-23 provided [NR6/017 – INQ000597160] The 'Vision for Justice in Scotland: three year delivery plan' [exhibit] was published on 6 November 2023, setting out reforms that will be introduced over the period 2023 to 2026]



## The Criminal Justice Board Operations and Analysis Group (OAG)

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

## Justice and Safer Communities Covid-19 Hub

84. To support the working of Scottish Government officials in responding to the pandemic a ‘Hub’ was established and resourced in March 2020. The Hub provided a single point of contact for Safer Communities and Justice Directorates to coordinate and collate responses to the Covid-19 commissions received from SGoRR, Organisational Readiness and others. Their remit also included the secretariat for the Justice Board Covid-19 Sub-Group. The Hub Operation Plan is provided: [NR6/018 – INQ000182900]. The Hub was then absorbed by the Communities and Public Services Hub in December 2020 and was stood down in April 2021.

85. The Hub contributed to Scottish Government wide decision making and advice and this included consideration of:

- PPE guidance
- Key workers and associated testing regimes

- the draft Strategic Framework
- Covid-19 guidance
- Information provided via the Scottish Government Safe and Sustained Opening Group
- Union engagement by justice partner organisations
- Statistical information submitted by justice partners to inform and share the Situation Report (SitRep) returned from theHub to SGoRR
- Information presented by Organisational Readiness on Concept of Operations papers (CONOPS).

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

#### Community Justice and Prisons RRT Subgroup

87. The Community Justice and Prisons RRT Sub Group was established in June 2020 in response to the pandemic and the actions taken by the CJB to establish the RTT Programme and its corresponding Community Justice and Prisons workstream. The workstream's purpose was the same as the Sub-Group's purpose, which was to reduce the number of individuals in prison by utilising community justice and prevention options as further detailed under the project aims in paragraph 89. The timing of its establishment reflects the timing and creation of the wider RRT programme of work and aligns with the other RRT workstreams. The objectives of the Sub-Group, are as detailed in paragraph 89 of this statement. Operationally, and separately to the work of this Sub-Group, Community Justice Scotland and the Scottish Prison Service acted immediately in March 2020 to respond to the pandemic.

88. The Sub-Group was jointly chaired by the Chief Executive of Community Justice Scotland (CJS) and the Chief Executive of the SPS (with the Chief Executive of CJS latterly taking a lead role as the focus was more on community-based interventions). The membership consisted of:

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

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

- Support the development of improved models of governance and collaboration that build on practice and approaches embedded as a result of the Covid-19 pandemic.
- Support the development of appropriate information sharing protocols and mechanisms which drive improvement in Scotland.
- Work in partnership with the Criminal Justice Board to develop and

encourage effective practice in community justice .

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

## **B. Decision making and advisory groups**

90.A summary of decision making, advice provided and the chronology of events related to Test Trace and Isolate (TTI) is provided at Section D.

91.The following key advisory, sub-groups and working groups were

involved in considering matters in relation to TTI within the Directorate General for Education & Justice. Relevant papers have been provided to the Inquiry under general disclosure.

#### Covid-19 Further Education and Higher Education Ministerial Leadership Group

92. The Covid-19 Further Education and Higher Education Ministerial Leadership Group was established in April 2020 and met for the first time on 2 April 2020. The Ministerial Group was chaired by the Minister for Further and Higher Education, Richard Lochhead MSP, and was intended to provide an action focused leadership forum for Government and its agencies to come together with the sector and:

- Share information, gather intelligence and discuss the response to key challenges across the tertiary sector as a result of the Covid-19 situation
- Unblock any issues where Government could help do this
- Enable us to progress, align and support the communication of the response across the tertiary sector
- Corral the sector's contribution to the economic and broader civic response
- Begin planning beyond the immediate term/for recovery.

93. The terms of reference set out that it would cover the following areas:

- Teaching, qualifications, admissions
- Student wellbeing (financial and other)
- Staff/worker wellbeing (financial and other)
- Institutional financial sustainability
- Supporting economic and civic society recovery
- Indirect impacts and contributions.

94. The Terms of Reference also made clear that the Ministerial Group

did not replace existing governance and decision-making mechanisms at Government, agency and individual organisation level. This group met 17 times, between 2 April 2020 and the final meeting of 11 March 2021. Terms of reference are provided in General Disclosure.

#### The Coronavirus (Covid-19): Advanced Learning Recovery Group

95. In May 2021, the Coronavirus (Covid-19): Advanced Learning Recovery Group was formed as one of the two specific groups to continue to sit underneath the CERG and Coronavirus (Covid-19): Advisory Sub-Group on Education and Children's Issues to provide the university, college and community learning sectors specific support in the response to and recovery from the pandemic.

96. The Coronavirus (Covid-19): Advanced Learning Recovery Group met for the first time, in line with the agreed terms of reference, on 28 May 2021. The group's purpose was to help develop guidance on the operation of colleges, universities and community learning and development (CLD) providers for academic year 2021/22. The group:

- Brought together decision makers and key influencers to ensure the delivery of the work set out in paragraphs 1 to 6 of the terms of reference
- Provided sectoral leadership and advice to ministers in developing their strategic approach, through considering advice from the Covid-19 Advisory Sub-Group on Universities and Colleges
- Worked across organisational and structural boundaries to support the response and recovery efforts
- Was a forum for frank and open discussion about what is working, and feedback on where improvement is required.

97. The group met biweekly (for 60 to 90 minutes). It was chaired by the Minister for Higher Education and Further Education, Youth Employment and Training, Jamie Hepburn.

98. This group met 25 times, between 28th May 2021 and the final meeting of 4th October 2022. Documents are provided as general disclosure.

#### Coronavirus (Covid-19): Advisory Sub-Group on Universities and Colleges

99. The Coronavirus (Covid-19): Advisory Sub-Group on Universities and Colleges (also referred to as 'the Expert Advisory Group') was formed in May 2021 and concluded its work on 15 June 2022.

100. The Coronavirus (Covid-19): Advisory Sub-Group on Universities and Colleges gave detailed consideration to how public health and related scientific advice can be applied to operational implementation. It supported Scottish Ministers and relevant Scottish Government senior officials by:

- Interpreting SAGE and Covid-19 Advisory Group outputs as well as other emerging scientific and public health evidence, in relation to university and college issues in the context of Scotland.
- Provided expert advice spanning the disciplines of public health, clinical advice, behavioural sciences, economics and statistical modelling, combined with expertise in educational and other issues relevant to universities and colleges.
- Advised Scottish Government, relevant Directorates, and analytical services colleagues on taking a strategic approach to identifying, accessing and using data to support the Scottish Government's understanding of managing Covid-19 risks in university and college settings.
- Providing expert advice, recognising the four harms, to support and

inform the development of guidance for universities and colleges, and as an aid to forward planning for both sectors.

- Developing links with other Scottish Government Covid-19 Advisory sub-groups, as appropriate.

101. The Expert Advisory Group was chaired by Professor Carol Tannahill until 14 September 2021, when Professor Linda Bauld took over as Chair until the conclusion of the group's work in 2022 and met 21 times. Documents are provided under general disclosure.

#### The Student Testing Programme Board

102. The Student Testing Programme Board was established on 13 November 2020 and met for the first time to enable students to make informed decisions regarding their travel to and from their term-time address, during the winter 2020 break.

103. The Group met 18 times between 13 November 2020 and 18 February 2021.

#### Overview of the approach and priorities throughout the pandemic relating to justice

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

105. In the immediate months of the pandemic, the focus across all



areas of work was to respond to these challenges – be it ensuring public safety through the operation of custody courts, to supporting those in prisons and on community sentences. The operation of the courts and tribunals are key to enabling justice processes to take place, so it was vital that new ways of working were quickly adopted to enable this.

106. Police Scotland initiated Operation Talla, the objectives of which were to preserve life, maintain law and order, and prevent crime, all while maintaining the core policing service during a period of uncertainty, and assisting colleagues in the NHS as they fought the worst effects of the pandemic.
107. These responses required legislation, and justice provisions within the emergency Coronavirus Acts enabled the core workings of courts to resume and addressed key consequences of public health restrictions across the justice system. These provisions reflected the independent and devolved nature of Scotland's justice system, distinct to that of England and Wales. During March 2020, Scottish Government officials worked rapidly with officials across government and the justice organisations to draft proportionate provisions to enable the continued operation of the justice sector. As set out in the Policy Memorandum for the first Coronavirus (Scotland) Act 2020, the Act made “adjustments to criminal procedure, and to other aspects of the justice system, to ensure that essential justice business can continue to be disposed of throughout the coronavirus outbreak”. A list of provisions relevant to the justice portfolio within the Coronavirus Acts is provided [NR6/019 –INQ000182901].
108. This work included completing EQIAs, considering what safeguards could be put in place. The Justice Directorate contributed to the EQIA for the Coronavirus (Scotland) Bill, provided: [NR6/020 – INQ000182765], and all EQIAs associated with the Coronavirus Acts' extension regulations and any extensions or permanence Acts

in relation to these. The Coronavirus Bills contained necessary measures required to respond to an emergency situation and the Scottish Government was satisfied that all of the measures contained within the Bills were appropriate and proportionate. The published EQIAs for the Bills details the impacts and assures on the legal protections in place and that such measures would be kept under review. Most impacts were temporary, spanning the duration of the Covid-19 pandemic and emergency situation, and many of the provisions where possible contain safeguards and mitigation measures to lessen the extent of any negative actual or perceived impacts. These safeguards were (i) the measures in the Bill will automatically expire six months after they come into force. The Scottish Parliament may extend these measures for two further periods of six months, giving the measures in the Bill a maximum duration of 18 months, (ii) where a measure is no longer considered necessary, Scottish Ministers can bring it to an end earlier than on this six-monthly schedule, (iii) Scottish Ministers are required by the Bill to report on the continued need for the measures, and on the use of powers in the Bill, every two months.

109. The Safer Communities Directorate did not complete any EQIAs as it did not lead on the drafting of any legislation.

110. A key element of the legislation was the additional powers that were given to police officers which enabled them to help protect public health by ensuring that the restrictions in place across the country were enforceable and in turn, being complied with. Throughout the period, direct engagement with Police Scotland, other enforcement agencies and with wider justice partners was vital as legislation and restrictions evolved, and to ensure that the powers the police were given were justified and proportionate. This included development of the approach by Scottish Government for those people organising, taking part in, and facilitating marches and parades during the pandemic.

111. The Coronavirus (Covid-19): Scotland's Strategic Framework, provided: [NR6/021– INQ000245551], was published on 23 October 2020 and set out the important role compliance and adherence to the measures could play in suppressing the virus, ensuring that, in addition to the role that enforcement agencies played, we also focussed on ensuring we supported individuals, businesses and organisations to adhere to protective measures for Covid-19.
112. As the pandemic continued, attention turned towards balancing the risks to public health with the operation of the justice system. Operational delivery partners, including the Scottish Courts and Tribunals Service (SCTS), took decisions based on an assessment of these risks and the available mitigations (such as the availability of Personal Protective Equipment (PPE), testing regimes and advice on distancing and room capacity) to inform the court programme and operations. These decisions and reviews were linked to advice from the Scottish Government more generally, and the state of the pandemic as the country entered the levels system and localised outbreaks and hot spots were managed with local restrictions.
113. Throughout 2020-21 and 2021-22, a key focus was on maintaining the health of prisoners held in prisons and young offenders institutions and of prison staff. The closed environments of prisons were recognised as representing a particular risk of spread of the virus and there was engagement between the Scottish Prison Service (SPS), Scottish Government and local and national public health officials on necessary measures, whilst respecting the human rights of prisoners. Enabling prisoners to maintain contact with families was also a priority, including when physical visits were necessarily suspended. There was subsequent engagement on the issues of testing and, in due course, the vaccination of prisoners and prison staff. The potential impact of the pandemic for community justice services in the community, including the management of high risk

offenders, was also considered and addressed from the outset of the pandemic.

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

115. As the risk decreased and management of the pandemic became more contained the focus of the sector shifted to consider how best to adjust to the “new normal”, building on the innovations and resilience measures which were quickly adopted during a time of crisis. The sector in April 2022 faced considerable backlogs and resource challenges, and the implementation of efficient and person-centred and trauma-informed practices, were key considerations in deciding the route out of the pandemic and into recovery.

116. The Justice Directorate did not have a lead role in the formulation, development and delivery of policy or systems for Test and Protect. However, alongside the work undertaken by Safer Communities/Police Division, the Justice Directorate did run the Cross-Directorate Safer Communities and Justice Directorate Covid-19 Hub, and also chaired the Justice Covid-19 Sub-Group of the National Justice Board, which enabled:

- Communication on agreed policy with the membership of the Justice Covid-19 Sub-Group.
- Discussions with the membership of the Justice Covid-19 Sub-Group on Scottish Government Covid-19 guidance and Covid-19 regulations.

- Facilitation of regular and ongoing engagement with justice partners, including leads from Scottish Courts & Tribunals Service, Crown Office and Procurator Fiscal Service, and many others to help inform thinking, and to collectively consider any operational issues arising.

117. The liaison role between Safer Communities officials and Police

Scotland was vital with regular discussions taking place with Police Scotland's Operation Talla team, initially on a daily and then on a weekly basis. Calls started in March 2020, in the very early stages of the pandemic, and were daily to ensure Police Scotland was kept updated on the fast-changing landscape and to allow them to feedback on any operational challenges to the introduction of the new legislation and enforcement measures. Calls moved to a weekly basis once processes/guidance/legislation was in place. These weekly calls ended in June 2022, when the final Covid-19 restrictions were lifted and the Chief Constable approved the stand down of Operation Talla structures. This forum enabled the Police Division to share Scottish Government policy considerations with Police Scotland, which would then be fed into relevant policy teams to help inform policy development, to advise Ministers and inform communication approaches.

118. A daily synopsis was provided by the Operation Talla team which provided detail on the levels of public engagement, compliance and enforcement in line with the 4Es (Engage, Explain and Encourage, only then Enforce) approach adopted by Police Scotland.

119. The Police Division did not have a leading role in communications plans, however, officials regularly engaged with Police Scotland to ensure messaging was consistent across both organisations. Additionally, through this regular engagement, officials were able to feedback to internal communications leads issues of low compliance to help inform and reinforce communications messaging.

120. As the Chief Constable has operational independence unlike England and Wales, Ministers did not issue guidance to Police Scotland directly in Scotland. No enforcement specific guidance was produced by the Scottish Government. Stakeholders, including Police Scotland, used the powers afforded to them under the relevant legislation, as well as the broader Scottish Government guidance produced by Health and Social Care where appropriate. More generally, engagement with SCTS and COPFS and other justice partners was conducted regularly through the Justice Board, Criminal Justice Board and Justice Covid-19 sub-group of the National Justice Board, in order to collectively discuss a wide range of Covid-19 policy matters. Further detail on the Justice Covid-19 Sub-Group, including their Terms of Reference as exhibited, is contained with paragraphs 88-89 of this statement, [NR6/010 – INQ000571137].

121. Reasonable excuse is a standard legal concept. Officers had to make rapid decisions about whether individuals had a "reasonable excuse" to breach regulations which could lead to potential inconsistencies. The lack of a precise legal definition required officers to exercise discretion, and there may have been instances where public understanding did not align with enforcement actions.

122. The Justice Covid-19 Sub-Group met on a weekly basis until 2021 when meetings then moved to a fortnightly basis. These meetings were formalised with agendas, papers, actions and minutes. An example minute from a meeting on 27 May 2021 is exhibited. [NR6/022 – INQ000597197]

123. Examples of actions taken as a result of discussions in the Sub-Group includes: Sharing of business continuity planning; documentation to inform operational planning and responses; and engagement with a range of third sector and victim groups.

124. Examples of Covid-19 policy matters discussed include (i) PPE

guidance, (ii) Key workers and associated testing regimes (iii) Relevant Covid-19 Guidance (iv) Statistical information sharing to inform the Scottish Government's Situation Report (Sitrep)

### **C: Joint working**

#### **Education**

125. Throughout the pandemic there was ongoing engagement with the UK Government and other devolved administrations on a regular basis at both official and Ministerial level. Generally, this was to share intelligence on issues as they emerged, keep up to date on the approaches taken by the various administrations and share learning as the pandemic progressed.
126. Scottish Government officials attended regular meetings with the UK Government and devolved administration counterparts at four nation meetings which were hosted at official level. These meetings, which were weekly at some stages of the pandemic and less frequent at others, were not minuted by the Scottish Government as they were hosted by other administrations. They were not decision-making groups, instead they allowed information exchange between the four nations.
127. In relation to TTI, specific direct engagement by education or justice officials was limited and any joint working with other devolved administrations is covered in more detail in the timeline provided in Section D, particularly in relation to testing programmes and consistency of advice and guidance, as appropriate.
128. There was ongoing dialogue with the UK Government throughout including specific engagement in relation to testing pilots in Scotland to ensure efforts were complementary and offered learning to inform future decision making.

129. The UK Government led on the development of new pathways, introducing new test kits and Standard Operating Procedures. The Scottish Government then adapted these for Scotland, taking account the clinical advice relevant to Scotland. Scottish Ministers used the start of academic term-times to remind their counterparts in other administrations to remind them about the importance of a UK-wide approach to Test Before Travel. This was seen as important given the implications of mass movement and mass movement on outbreak control.

130. Timing was the primary area of divergence between the devolved administrations with regard to TTI in schools and Higher Education/Further Education settings. This was due to differences in school term dates and, in some cases, the university/college academic year.

131. Additionally, the end of the universal testing offering towards the end of the pandemic (the spring of academic year 2021/22), differed. The UK Government withdrew the universal offering for universities and colleges in March 2022, which meant that as the UK Government was no longer incurring expenditure on this testing, no consequential funding was made available for the devolved administrations. Whereas Scottish Ministers took the decision to continue with universal testing until the end of academic year 2021-22.

132. More detail on cross-border joint initiatives and international comparisons is provided in Section D.

## Justice

133. As health and justice are devolved, coronavirus regulations were often different in Scotland to the rest of the UK and, as a result, required different police powers. The transfer of powers to devolved



institutions means that there will be legitimate differences of policy approach, legislation and funding decisions due to different governance and legal systems in place and, in this instance, differing coronavirus regulations and restrictions. However, as part of our regular rhythm of communication, officials participated in regular meetings with the Ministry of Justice (MoJ), the Home Office and the devolved administrations to discuss approaches across the UK.

134. The TTI policy was very much health led. The Scottish Prison Service, engaged directly with NHS and Public Health colleagues, to operationalise this policy within the prison estate and to ensure compliance with TTI. The role of the Justice Directorate in this respect was to make sure that justice system partners were engaged and that relevant justice considerations were factored into health decisions. From a justice perspective, the approach to TTI was based on public health advice, and the broader Scottish Government policy approach formulated in response to this was not involved in international comparators, although there was discussion about those approaches in different residential/organisational settings.

135. Development of TTI guidance was health led. However, during the Covid-19 pandemic, Justice Analytical Services (JAS) collected data from partner organisations to support policy decisions, inform Ministers and to make data publicly available in the form of regular statistical reports. For justice and policing approaches, JAS produced two reviews of international policing approaches and responses to policing during lockdown ([Part 1](#)) and during the easing of lockdown ([Part 2](#)). The reviewed jurisdictions for International Policing Responses during lockdown were England, Wales, Northern Ireland, Republic of Ireland, Italy, France, Germany, Spain, Sweden, New Zealand, South Korea and USA. For the second review during easing of lockdown, jurisdictions covered included England, Northern Ireland, Republic of Ireland, Netherlands, Norway and France. Whilst the two reviews considered and presented information on the different

approaches across the jurisdictions, they did not seek to make a judgement as to their effectiveness – relative to the position pertaining in Scotland. Officials are not aware of any changes to our own approach made as a result of these comparisons. However, colleagues from JAS presented the findings at the Independent Advisory Group on Police Use of Temporary Powers Relating to the Coronavirus Crisis and a note of the meeting has been previously provided [NR6/023 – INQ000215052]. We are not aware of any new actions taken specifically in response to the findings.

## **D: Testing**

### Testing in detained settings

136. The response to the pandemic in prisons, including testing, was led by the Scottish Prison Service (SPS), in partnership with the Scottish Government, NHS, and Public Health Scotland (PHS) and other partners. In early 2020, SPS established a National Coronavirus Response Group with PHS. This group implemented a national pandemic plan across the prison estate, keeping plans under consistent review with health partners. The National Prison Care Network played a crucial role in working with local NHS partners and SPS to facilitate national co-ordination, develop consistent approaches and co-ordinate communications between partners.

137. Following national policies, anyone in custody displaying symptoms was asked to self-isolate. Similarly, prison staff displaying symptoms were advised to follow the national advice and self-isolate. Clinically-led protocols for the management and care of those who had contact with or was suspected of contracting Covid-19 were in place. SPS also aimed to ensure all new admissions to custody self-isolated for seven days before moving into the main prison population.

138. Consistent with the wider community, everyone in prison who

displayed symptoms of Covid-19 were tested to determine whether or not they had the virus. All health board areas provided testing of those in custody when symptomatic in order to prioritise treatment and ensure that prisoners were only required to self-isolate when it was absolutely necessary. All prison staff were able to access the drive through testing sites in Glasgow, Edinburgh, Aberdeen and Inverness.

139. In November 2020, in response to the second wave, the Clinical Advisory Group for Prisons (CPAG) was established to ensure that the prison service was provided with strategic national clinical and public health advice in response to Covid-19. In July 2021, the first prison specific guidance was published by Public Health Scotland, co-produced by PHS, Antimicrobial Resistance Healthcare Associated Infection (ARHAI) Scotland, SPS and NHS National Prison Care Network Chair. {Exhibits to be added} COVID-19: guidance for prison settings and The guidance was updated 14/06/2022 (v2.0), 22/07/2022 (v2.1), 23/08/22 (v2.2), and 22/02/22 (v2.3), provided [NR6/024 – INQ000597161, NR6/025 – INQ000597162, NR6/026 – INQ000597163, NR6/027 – INQ000597164].

140. In spring 2021, the Prison and GEOAmey Testing Board was established under the remit of the National Testing Programme Board. Prisons were initially settings of low infection rates of Covid-19, however the second wave in Autumn 2020 saw outbreaks affect the majority of prisons. The Board was established to align with national testing strategies and in recognition of prisons as a vulnerable environment. Following recommendations from CPAG, it oversaw six asymptomatic testing pathways between June 2021 and November 2021:

- 1) SPS staff PCR pathway offering weekly PCR testing at SPS sites
- 2) Private prison staff LFD pathway (this was a separate pathway due to legal barriers to PCR testing in private prisons)

- 3) Admissions testing PCR/LFD pathway enabling testing on Day 1 and Day 7 or 8 of admission
- 4) Prisoner LFD pathway broadly in line with the 'universal' public offer in community
- 5) Staff LFD pathway allowing staff to access twice weekly LFD testing in addition to weekly PCR testing
- 6) Prisoner visitor LFD pathway which provided LFD tests to prison visitor centres.

141. In early 2023, Ministers made the decision to pause asymptomatic admission and transfer testing in prisons. In July 2023, testing in prison settings reverted to the pre-pandemic approach to infection testing which was based on the National Infection Prevention and Control Manual (NIPCM).

142. The following table shows the additional testing SOPs held by the Scottish Government in relation to Covid-19 testing (in prisons):

Individuals in Prison Custody Testing - LFD Collect	[NR6/028 - INQ000496375]	Page 6
Prison employees Testing - PCR Regional Hub	[NR6/029 - INQ000496378]	Previous Versions: [NR6/030 - INQ000496376]

#### Development and roll out of testing programmes

143. The timeline below sets out key dates and decisions in relation to testing in educational settings. Asymptomatic testing programmes were put in place in early learning and childcare settings, schools, and further and higher education settings.

Date	Event
1 July 2020	<p>From July 2020 all symptomatic individuals over five years of age in Scotland could access a test through Test &amp; Protect. Tests could be accessed through standard channels such as a Regional Testing Centre, a Mobile Testing Unit or home using a Home Test Kit. At that time children under five years of age were not tested unless there was a clinical need.</p> <p>On 1 July 2020 the Scottish Government's Clinical Guidance Cell advised that, based on the available evidence, testing symptomatic children under five would be beneficial to reduce the impact of unnecessary self-isolation on children and their families. Ministers were subsequently asked to approve the provision of testing to symptomatic children under five years of age using PCR tests. This recommendation was supported by the Royal College of Paediatrics and Child Health. At its meeting on 21 July 2020, the Covid-19 Advisory Sub-Group on Education and Children's Issues examined evidence from a wide range of expert sources relevant to monitoring, surveillance and testing, including international comparisons. The Scottish Government announced, on 21 July 2020, an extension of Covid-19 testing to include children under the age of five who were displaying potential Covid-19 symptoms.</p>
22 July 2020	<p>The Scottish Government extended Covid-19 testing to include children under the age of five displaying potential coronavirus (Covid-19) symptoms.</p>

Date	Event
6 August 2020	In August 2020, the Testing Strategy for Scotland was published, setting out the role testing played in tackling Covid-19 [NR6/031 - INQ000147448]. Discussions between officials and the University of St Andrews to agree approach to establish local testing sites. These were primarily for students at the university however the general public could also use them and book a slot at them. They were located near to universities to support the return of students.
12 August 2020	In order to support the return to school after the first lockdown, in August 2020, the Deputy First Minister announced that school and ELC staff would be able to access PCR testing for Covid-19 if they were concerned they had been at risk of infection, even if they showed no symptoms. This offer was primarily accessed by school staff through an employer referral portal for local authorities. This was introduced to provide additional reassurance to teachers and other staff as children and young people returned to the classroom and to nursery. It was also announced that the data set collected in relation to Covid-19, by Public Health Scotland as part of its Covid-19 surveillance in education programme, would be enhanced to track and compare risks in different staff groups; a new programme of serology testing; and a programme of polymerase chain reaction testing of pupils and staff from a sample of schools.
17 August 2020	Officials recommended proposals to Ministers to deliver testing to asymptomatic Higher Education students attending universities and colleges in Scotland, intended to reduce the risk of transmission from this group both within the educational environment and within local communities [NR6/032–INQ000244406].

Date	Event
18 August 2020	The Cabinet Secretary for Health and Sport responded with further questions around co-ordination with university health services and focus on areas of geographic prevalence. [NR6/032 – INQ000244406].
19 August 2020	Further advice was issued to the Cabinet Secretary for Health and Sport on the proposals previously sent to Ministers on 17 August [NR6/033 – INQ000571224].
25 August 2020	Advice issued to the First Minister on SAGE guidelines regarding mandatory testing of Higher Education students [NR6/034 - INQ000378504].
27 August 2020	An update was provided to Minister for Further Education, Higher Education and Science about deliverability issues for test kits, specifically booking tests through as well as wider issues on capacity as a result of pressures in England and Wales [NR6/035 - INQ000571154].
28 August 2020	The First Minister agreed to further advice provided to Ministers on measures to reduce risk of transmission within higher education institutions [NR6/036 - INQ000245755] and [NR6/037 - INQ000571160].
3 September 2020	On 3 September 2020, the Covid-19 Education Recovery Group (CERG) agreed on the need to discuss with testing policy the current situation with demand for and accessibility of testing, including messaging.
September 2020	Another testing pathway was developed for the management and containment of outbreaks with localised settings on university campuses (such as halls of residence) for Higher Education students.

Date	Event
28 September 2020	Guidance was issued to Higher Education students travelling back to campus for the start of the new term-time. The importance of symptomatic testing was included in this communication.
26 October 2020	In October 2020, advice was provided to the Cabinet Secretary for Health and Sport, copied to the Deputy First Minister, regarding a UK Government approach re: possible participation in LFD testing pilots. That advice recommended starting conversations with Scottish schools' stakeholders to explore whether there would be support for a small number of schools pilots, with testing being made available to school staff and S5 and S6 pupils, and to actively review learning from pilots in other parts of the UK. The Deputy First Minister responded to say that if there was capacity for asymptomatic testing to make an impact in schools, he would be supportive.
28 October 2020	The Minister for Further, Higher Education and Science met with University principals to discuss approaches to pre-winter travel testing for Higher Education students. [NR6/038 – INQ000571161]



Date	Event
7 November 2020	Officials provided Ministers with advice about UK Government plans to offer lateral flow device tests to HE and FE students and offer advice on the public health testing policy approach to doing this in Scotland. This proposal would enable a proportion of asymptomatic student cases to be identified and therefore reduce further transmission by isolating these cases and their close contacts, noting the clinical view that a negative lateral flow test result should not be used as a basis to permit loosening of restrictions for an individual. Discussions with universities were planned to enable officials to understand how many students could be tested. [NR6/039 – INQ000244504] and [NR6/040 - INQ000242783]
9 November 2020	Initial proposal submitted to the Deputy First Minister for the arrangements that would be necessary to put the proposal of offer lateral flow device tests to Higher Education and Further Education students, into effect. [NR6/041 - INQ000571167]
11 November 2020	Plans for a Covid-19 student testing scheme for Higher Education and Further Education students were announced by the Minister for Further and Higher Education. The scheme aimed to support the safe return of HE and FE students ahead of the winter break [NR6/042 - INQ000571155].

Date	Event
13 November 2020	<p>The Student Testing Programme Board was established in late 2020 in response to Ministers' priority to enable students to travel home safely for the winter break and return to studies in the new term and minimise Covid transmission risk. The trigger for establishing the Board was the urgent need to plan and deliver a national asymptomatic testing programme for students in Higher and Further Education settings, aligned with the UK-wide approach. The Board provided strategic oversight, supporting decision-making and oversaw delivery risks. It was supported by key stakeholders including the Scottish Government, Public Health Scotland, NUS Scotland, Colleges Scotland, accommodation providers and staff unions.</p>
16 November 2020	<p>Meeting with the First Minister, at which the Deputy First Minister and the Cabinet Secretary for Health and Sport agreed to take forward work to move towards more testing for teachers using lateral flow tests.</p>

Date	Event
18 November 2020	<p>Parliament backed a Green Party motion calling for regular testing of school staff and senior pupils. The Scottish Government subsequently committed to establishing a number of pathfinder projects in the new year with a view to establishing a sustainable testing programme in schools.</p> <p>The Scottish Government took forward a small number of pathfinders to test different models of asymptomatic testing in schools in January 2021 – one model, which was an extension of existing UKG Pilots, used in-school testing with Lateral Flow Devices (LFD), and another involved at-home testing using PCR tests.</p> <p><u>In-school LFD tests</u></p> <ul style="list-style-type: none"> <li>• Two secondary schools in two local authorities - Midlothian and South Ayrshire – took part in the model using LFD tests. These were offered to all pupils and staff attending school. Testing was done entirely on a voluntary basis, with parental consent where appropriate.</li> <li>• Those who volunteered did the tests in school under supervision by trained staff on a weekly basis.</li> </ul> <p><u>PCR tests</u></p> <ul style="list-style-type: none"> <li>• The PCR test model was offered to school staff only and was offered to eight schools – six secondary and two primaries - in five local authority areas - West Lothian, South Lanarkshire, North Lanarkshire, Stirling, and Clackmannanshire. This offer was subject to any exceptional school opening arrangements from January allowing continued participation.</li> <li>• These tests were intended to be done once a week at home and, again, testing was on a voluntary basis.</li> </ul> <p>The pathfinders were primarily intended to help the Scottish Government rapidly identify and understand any logistical and implementation challenges involved in different models of testing, to inform any scale-up considerations.</p> <p>Although the national scale-up model was not identical (due in large part to the fact that at-home LFD testing was subsequently approved by the MHRA), it was informed by learning from those pathfinders – for example, the workforce burdens involved in in-school LFD testing were significant, which informed the preference for at-home LFD testing when this became available.</p> <p>Parliamentary question on testing in schools provided, NR6/043 – INQ000597165.</p>

Date	Event
23 November 2020	Advice was issued to Ministers about the testing programme for HE and FE students travelling in advance of the winter break, which was due to be launched the following week, and associated communications activity [NR6/044 - INQ000571156].
24 November 2020	<p>Advice was provided to the Cabinet Secretary for Health and Sport and the Deputy First Minister on 24 November 2020 about options for enhancing asymptomatic testing in schools.</p> <p>[NR6/045 - INQ000244059] It noted limited evidence to support the need for further asymptomatic testing in schools but also noted increasing union pressure to take action in this area, with high levels of staff anxiety contributing to calls for school closures at higher levels of the strategic framework than was in place at the time. The advice set out potential options to expand testing in the near and medium term, which included the potential for a small number of Scottish schools to participate in a UK Government pilot of in-school Lateral Flow Device testing for staff and some pupils, or the development of alternative in-school or at home approaches to testing.</p> <p>In response, the Deputy First Minister indicated that he wished further work to be undertaken to ensure that the Scottish Government signalled clear support for offering widespread asymptomatic testing for school staff at the earliest practical point.</p>

Date	Event
25 November 2020	<p>The Cabinet Secretary for Health &amp; Sport provided a statement to Parliament on testing expansion and committed to undertake a number of pathfinder testing programmes on deliverability in the school environment.</p> <p>Guidance and SIS (Student Information Scotland) FAQs were published for Higher Education and Further Education students wishing to travel home for winter break [NR6/046 - INQ000571162].</p>
23 and 26 November 2020	<p>There was correspondence with the Minister for Further, Higher Education and Science and subsequent Ministerial agreement on communications activity about the testing programme for Higher Education and Further Education students travelling in advance of the winter break [NR6/047 - INQ000241515].</p>

Date	Event
3 December 2020	<p>Further advice was provided to the Cabinet Secretary for Health and the Deputy First Minister on 3 December. This set out updated proposals to bring forward timelines for some of the piloting proposals (via extension of UKG in-school testing pilots for staff and secondary school students, using LFD tests and confirmatory PCR tests) and noted that officials were also exploring further options around pilots that involved at-home testing, focused on school staff and senior pupils and using PCR tests. The relevant submission also set out advice on capacity implications if pilots were to be scaled nationally, with differing implications dependent on the model used and whether only school staff were to be included or whether senior pupils were also to be covered. The Deputy First Minister noted that he would ideally prefer to include senior students in pilots (while being alive to capacity concerns). [NR6/048 - INQ000245369], [NR6/049 - INQ000245370], [NR6/050 - INQ000245371], [NR6/051 - INQ000245372], [NR6/052 - INQ000245374], [NR6/053 - INQ000245375].</p> <p>Guidance published for Higher Education and Further Education for students returning after the Winter break [NR6/054 – INQ000256722 and NR6/055 – INQ000571164].</p>
9 December 2020	Guidance published for Higher Education and Further Education students returning to campus after the winter break [NR6/056 - INQ000242522].
14 December 2020	Self-isolation guidance for HE and FE students was published along with guidance for students returning to Higher or Further Education after the winter break and advice for providers on the setting up campus testing facilities.

<p>15 December 2020</p>	<p>An update was provided to the Cabinet Secretary for Health and Sport and the Deputy First Minister on progress about asymptomatic testing pathfinder programmes, as well as information on emerging UK and Welsh Government plans for testing in schools [NR6/057 - INQ000244055]. The advice noted that the three pilot areas identified for extension of the UKG pilot approach (involving in-school LFD testing and confirmatory PCR tests). Officials were hopeful of having pilots up and running by 11 January, although there were important caveats attached with regard to the schools workforce requirements to run these pilots. The advice also noted that work was under way with 6 pilot areas to test an at-home, PCR testing model, which was likely to have significantly fewer schools workforce requirements. Officials also expected that it may take slightly longer to put these pilots into operation than the UKG pilots, although they were still aiming to begin implementation in mid-late January.</p> <p>The update on emerging UK Government and Welsh Government plans noted that these centred around the use of LFD tests in-school, requiring school staff (or volunteers) to be trained to administer/support testing and to log test results. There was at this stage no MHRA authorisation for LFD tests kits to be used for home testing. The advice noted the mixed reaction to the Welsh Government proposals, where teaching unions had stated that while the principle was laudable, implementation would be challenging, particularly in respect of staff having time to administer or oversee testing themselves. It also noted that, if a UK Government announcement were made in line with their emerging proposals, the Scottish Government may come under pressure to move further and faster with its school testing plans. It stated:</p>
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Date	Event
	<p>“While we would recommend resisting this if possible, at least until we have the early learning from our pilot proposals, we have worked up some early options that could potentially be deployed post-Christmas if required.”</p> <p>Those options were:</p> <ul style="list-style-type: none"> <li>(1) To maintain current piloting commitments</li> <li>(2) To seek to participate in scale up of UKG testing plans</li> <li>(3) To scale up the at-home PCR testing pilots at greater pace</li> </ul> <p>The advice covered the pros and cons of each option and considered the impacts on testing capacity. It recommended option 1, to ensure that any wider rollout of asymptomatic testing for schools was based on good quality learning and evidence in the Scottish context. In the event that this was not judged to be sustainable, it noted that officials’ preferred option would be option 3, with any such initiative limited to secondary and special school staff only in the first instance due to capacity concerns.</p> <p>The advice also noted that the main financial uncertainty regarding the development of the pilots was the question of the schools workforce required to administer onsite testing. It stated that there would be “no direct costs for the Scottish Government associated with the provision/distribution of the tests for either the pilots or for the scale-up options, as this is covered through our participation in the UK Testing Programme”.</p>



<p>17 December 2020</p>	<p>By December 2020, in advance of the second lockdown, 22 local testing sites (LTS) had been established for higher education students (near universities and areas of high prevalence).</p> <p>The UK Government announced rollout of weekly testing for school staff and serial testing of close contacts, using LFD devices in-school.</p> <p>An update was provided to Ministers on 17 December, following a UK Government announcement on their testing plans [NR6/058 - INQ000244058]. The advice noted:</p> <ul style="list-style-type: none"> <li>• UK Government had confirmed the details of a rollout of weekly testing for school staff and serial testing of close contacts, using LFD devices <u>in-school</u>.</li> <li>• UK Government also announced that it would: <ul style="list-style-type: none"> <li>○ Delay the start of most face-to-face secondary education for a week (with exceptions for students in exam year groups, vulnerable children and children of critical workers, who would all attend school or college in person from the start of term, as would all students in primary, special and alternative provision schools and colleges). Pupils not in school would undertake remote learning, before returning to school from 11<sup>th</sup> January;</li> <li>○ During that first week (w/c 4 January), offer return-to-school testing for all staff and pupils. This would involve: <ul style="list-style-type: none"> <li>▪ Distribution of LFD test kits to all secondary schools and FE institutions.</li> <li>▪ Guidance/training being made available online. Armed forces personnel would “support directly through planning with schools and colleges”.</li> </ul> </li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>▪ Schools expected to identify the staff to undergo training and set up test sites in schools. Reasonable workforce costs would be reimbursed.</li> <li>▪ Two LFD tests, 3 days apart, offered to staff and pupils during w/c 4<sup>th</sup> January, prior to their return to in-school learning from 11<sup>th</sup> January. Positive results confirmed by a lab-based PCR test.</li> <li>▪ Testing would be “optional but strongly encouraged, particularly in areas of higher prevalence of the virus”.</li> </ul> <p>The advice noted that the proposals appeared to be very logistically challenging for schools to deliver, particularly as the announcement had been made one day before the last day of term for most schools in England. Unions had reacted critically.</p> <p>The advice also noted that plans for school testing in Scotland at that point remained as set out in the submission of 15 December – primarily through delivery of two strands of piloting work beginning in January, to allow the Scottish Government to understand clearly how delivery of testing could work successfully in Scottish schools.</p> <p>It also set out that the Advisory Sub-Group on Education and Children’s Issues and the Covid-19 Education Recovery Group would be meeting in the first week of the return to school, to consider the latest evidence on infection and transmission and whether there was any requirement to implement additional safeguards in schools. It was expected that that work would help inform consideration of whether there was any requirement to scale up those testing plans, and that discussion of potential</p>
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Date	Event
	<p>options for doing so had also been included in the previous submission.</p> <p>The Deputy First Minister responded with regard to the UK Government proposals as follows:</p> <p>“The DFM does not think we have the advice that would support such a step at this stage. He would be grateful if we could intensify our efforts on rolling out the strategy we have agreed and to trying to expand it to a larger number of schools if at all possible.”</p>

Date	Event
18 December 2020	<p>The Schools Asymptomatic Testing Programme Board held its first meeting. Members considered draft terms of reference and an update on proposed pilots. The Board was responsible for overseeing the Schools and ELC Asymptomatic Testing Programme. The interests of ELC and SACC services, including childminders, regarding TTI, were also considered by the Covid-19 Education Recovery Group (CERG), the Advisory Sub-Group on Education and Children's Issues, the Critical Childcare and Early Learning and Childcare Sub Group (CCELC) which was replaced by the Covid Reference Group (CRG), and the Registered Childcare: Covid Impact Group. The replacement of the CCELC with the CRG was triggered by the need at the time to shift the focus from the provision of critical childcare to broader engagement with the childcare sector to support providers to respond to the Covid-19 pandemic. The CRG had a broader membership than the CCELC, including representatives from the private, voluntary and independent childcare sector. Discussion minutes are provided as part of the general disclosure of documents.</p>

Date	Event
Late December 2020	<p>Information was shared by UK Government officials that the MHRA was considering the potential for clearance to be given for LFD tests to be used at home. This information was of itself valuable, as it helped inform advice around short and medium term options. MHRA did subsequently provide regulatory approval for the use of LFD test kits at home on 23<sup>rd</sup> December [NR6/059 – INQ000597168]</p> <p>Although advice to Ministers on 12 January 2021 noted:</p> <p><i>“Recently the MHRA also approved the use of LFDs at home by lay people, as a case finding tool, and we are hoping that this will become a deliverable option soon once the UKG has put in place arrangements to meet the strict MHRA conditions attached to such testing, and when LFDs in small pack sizes are available. However, we do not have good visibility of how close UKG is to having a model which meets MHRA requirements, and which would enable us to use this type of testing for school staff.”</i></p>
23 December 2020	<p>The Cabinet Secretary for Health and Sport delivered a statement to Parliament on testing expansion which committed that, from the return of the school term in January, the Scottish Government would undertake a number of pathfinder testing programmes on deliverability in the school environment with the objective of establishing a sustainable programme of asymptomatic testing amongst school staff at the earliest opportunity.</p>
January – February 2021	<p>Roll out of asymptomatic LFD testing for university students</p>

Date	Event
4 January 2021	Advice issued to Ministers about readiness for return to term-time travel for FE students, including arrangements for PCR testing [NR6/055 - INQ000571164].

<p>12 January 2021</p>	<p>Further advice was provided to the Cabinet Secretary for Health and Sport and the Deputy First Minister about how an expansion of asymptomatic testing could support a return to schools [NR6/060 - INQ000243253]. This advice was developed jointly by health and education officials, with input from the Deputy Chief Medical Officer. It noted that:</p> <p>“To date, asymptomatic testing of staff has not been a key feature of school safety in Scotland...” and stated: “This approach reflects that there has not to date been a strong public health case for testing school staff. While in health and social care settings, regular testing of staff is a key additional measure to reduce the risk of transmission from staff to vulnerable people (i.e. in terms of morbidity and mortality), the risk associated with school staff transmitting to pupils (and vice versa) has been assessed to be significantly less, because of the lower vulnerability of staff and pupils compared to, for example, care home residents.”</p> <p>“However, looking ahead it is clear that a safe return to schools, with all the public health benefits that that will bring to young people and society more widely, will require as strong a package of mitigation measures to be in place as possible, reducing the risks of any in-school transmission involving the new variant and so providing school staff and communities with the confidence they require to return. The new variant has introduced some uncertainty as to whether the existing package of mitigation measures in schools will be sufficient to maintain the previous low-risk environment, and work is ongoing to consider what enhancements may need to be put in place. In our view, testing could have a role to play in supporting this in two distinct ways;</p>
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	<ul style="list-style-type: none"> <li>- By enhancing the ability to use testing in schools as a case-finding tool to enable asymptomatic cases which would not otherwise have been found to be identified, allowing action to be taken to reduce the risk of onward transmission.</li> <li>- By improving the confidence of staff by enabling them to access regular asymptomatic testing. In addition to the case finding benefit, we hope that regular negative tests would provide confidence around the efficacy of school safety measures, and thereby provide them with confidence that they have not become infected if they test negative.”</li> </ul> <p>The advice to Minsters outlined that the ELC Directorate was developing a set of public health messages to reassure the childcare sector and would use that route to reinforce existing testing routes and if necessary to explain the difference in approaches between schools and ELC. The advice said that if LFD at-home testing became more widely available then officials would suggest considering whether the ELC workforce should be offered the same access to testing as the schools workforce.</p> <p>The Deputy First Minister responded to agree the recommendation on 26 January 2021, provided [NR6/061 – INQ000597166] and said that he would support testing being extended to ELC staff, and those providing school age childcare, working in school settings. The Cabinet Secretary for Health and Sport agreed the recommendation on 27 January. Scottish Government officials continued working with UK Government officials and local authority representatives to take forward the practical arrangements to procure and deliver LFD test kits to schools in Scotland.</p>
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Date	Event
13 January 2021	Pilots of two different models were planned to begin in a number of schools. Building on plans for pilot work, this advice included a recommendation that all school staff be offered regular asymptomatic testing, accessed through their school, delivered as PCR testing until such time as MHRA approval meant that LFD tests could be distributed to schools for home use by staff. The Deputy First Minister updated Parliament on the planned pilot work on 13 January 2021, and pathfinder pilots began in a small number of schools on 18 January 2021. Discussions between the Scottish Government and UK Government officials about the potential for at home LFD testing continued during this period.
15 January 2021	Temporary lockdown guidance was published for colleges and universities and accommodation providers, [NR6/062 – INQ000545826]
18 January 2021	Ten Pathfinder schools testing pilots commenced. Please see timeline entry dated 18 November 2020 above for further details.

Date	Event
22 January 2021	<p>Following MHRA approval for at-home LFD testing, advice was provided to Cabinet Secretary for Health &amp; Sport and the Deputy First Minister recommending that all school staff should be offered twice weekly LFD testing using the LFD collect model [NR6/063- INQ000244848]. The advice noted:</p> <p>“In the course of this week, we have had much more positive conversations with officials in England about their plans to give primary school staff in England lateral flow devices to use at home, in order to offer regular testing to this staff cohort. This “LFD Collect” model involves schools administrating the distribution of packets of 7 LFD tests to staff, for staff to use at home. Following a conversation yesterday morning, while there are still a number of points of detail to be resolve, and a substantial amount of work to be done to put in place Scottish guidance and arrangements, we are now confident that this approach can be used to offer all primary and secondary school staff in Scotland regular asymptomatic testing.”</p>
26 January 2021	<p>The Deputy First Minister agreed with the recommendation regarding school staff, and indicated he also wished to extend testing to nursery staff and those providing school age childcare working in school settings. The Deputy First Minister noted that officials were continuing to consider options for offering regular testing to a wider ELC workforce and would provide advice in due course [NR6/064 - INQ000571163].</p>
27 January 2021	<p>The Cabinet Secretary Health and Sport agrees the recommendations in the submission of 22 January.</p>

Date	Event
28 January 2021	Follow up advice was provided to the Deputy First Minister and the Cabinet Secretary for Health and Sport on 28 January with regards to testing senior phase (S4-6) pupils on return to school [NR6/065 - INQ000245085]. This noted that the Deputy Chief Medical Officer was of the view that, in order to mitigate risks around a return to school for senior phase pupils, it would be helpful to provide them with testing at the point of return and regular testing thereafter. The use of LFD collect was recommended. The advice noted that the MHRA had agreed that that testing approach could be used for the age group in question. This was agreed by the Cabinet Secretary for Health and Sport on 29 January and the Deputy First Minister on 31 January.
29 January 2021	The Cabinet Secretary for Health & Sport agreed to use of LFD collect model for senior phase pupils.
29 January 2021	The Cabinet Secretary for Health and Sport agreed to proposal to allow the full childcare workforce (except childminders) to be included as part of the testing group and enable all childcare staff to access twice weekly testing [NR6/066 – INQ000571178]. Ministers proposed to start the roll out to coincide with the return of schools and other childcare settings, focussing initially on school-based settings and then expanding the roll out to all other childcare settings with the intention to have achieved roll out by early April 2021.
31 January 2021	The Deputy First Minister agreed to use of LFD collect model for senior phase pupils.

Date	Event
2 February 2021	<p>The First Minister's statement to Parliament on 2 February 2021 set out plans for a programme of asymptomatic testing for school and ELC staff in settings attached to schools and senior phase pupils, to support the return of children to ELC settings and schools.</p> <p>The key features of the initial programme were:</p> <ul style="list-style-type: none"> <li>• Schools were provided with packs of Lateral Flow Device (LFD) test kits for staff and senior phase pupils</li> <li>• Schools were then asked to distribute these test kits to consenting staff and senior phase pupils. Schools were asked to keep a log of which kits had been distributed to which individuals (a regulatory requirement in line with MHRA authorisation)</li> <li>• Staff and senior phase pupils would take test kits home and, twice weekly, following clear instructions for use, perform the tests on themselves or with the support of a parent or guardian. They would then be asked to register both positive or negative results on a web-based portal, with the results shared with NHS Test and Protect</li> <li>• The processes that were to be followed by individuals depending on a positive or negative result were clearly explained in the supporting guidance</li> <li>• Schools would be able to reorder test kits when they needed to do so. Guidance noted that the precise processes for doing so were still under development and would be communicated to schools as soon as they had been confirmed.</li> </ul>

Date	Event
4 February 2021	The Test Before Travel proposal was circulated to the Student Testing Programme Board [NR6/067 – INQ000597167]
8 February 2021	<p>The Learning Directorate worked with the Department of Health and Social Care (DHSC) and its delivery partners to support the delivery of test kits to schools from 8 February 2021.</p> <p>Asymptomatic testing for staff in schools and the first phase of a routine testing programme for ELC and School Age Childcare (SACC) services attached to schools began on 22 February 2021. The roll out of phase two of the testing programme varied between local authorities due to delivery times and applied to all standalone ELC and SACC settings registered with the Care Inspectorate which were not attached to schools, including private, voluntary, independent or local authority operated settings. For childminders a different route was made available from 22 February 2021 to access an on-demand asymptomatic PCR test in circumstances where they thought they might have been exposed to the virus. Following an announcement by the UK Government that its full return to school from 8 March 2021 would be supported by an enhanced testing programme including in-school testing and an offer of home delivery of at-home LFD test kits on request for households where one member was a school pupil or works in a school, further advice was provided to the Cabinet Secretary for Health and Sport and the Deputy First Minister on 1 March regarding the extension of the LFD at home testing offer to S1-3 pupils. Clinicians noted that case finding amongst the S1-3 cohort could potentially increase the mitigation of transmission risks in the secondary school environment as part of plans for a phased return. It was therefore recommended that testing for S1-3 cohort should be introduced alongside any fuller return to schooling. This was agreed on the same day.</p>

Date	Event
14 February 2021	Asymptomatic testing for staff in schools and senior phase pupils began.
17 February – 18 February 2021	Discussion with the Minister for Further and Higher Education about Test Before Travel arrangements for Higher Education students, including correspondence with UK Government and Devolved Administrations. [NR6/068 – INQ000597169] .There was a Ministerial letter subsequently sent on 18 February. The UK Governments acknowledgement of plans was received on 9 March. [NR6/069 – INQ000597170]
22 February 2021	<p>For staff in ELC and SACC settings that were attached to schools, testing began on 22 February 2021.</p> <p>The second phase, which began over the following weeks enabled all standalone ELC and SACC settings registered with the Care Inspectorate as a daycare for children service to begin routine asymptomatic testing.</p> <p>Childminders were not included in the routine at home testing programme that was available to the wider childcare sector as they are sole workers, and the key risk was from adult to adult transmission. For childminders a separate route was made available to access an on demand asymptomatic PCR test in circumstances where they could have been exposed to the virus.</p> <p>Communications were issued to the sector on 19 February 2021 explaining the position. [NR6/070 – INQ000571219]</p>

Date	Event
28 February 2021 – 5 March 2021	Correspondence from Peter Mathieson, Principal and Vice Chancellor of Edinburgh University, on behalf of Universities Scotland to the Cabinet Secretary for Health and Sport, requesting that permission that Higher Education and Further Education staff be included for asymptomatic testing. The Cabinet Secretary for Health & Sport responded, giving the agreement in principle [NR6/071 – INQ000571165 and NR6/072 – INQ000571166].
1 March 2021	Policy advice was provided to the Cabinet Secretary for Health & Sport and the Deputy First Minister on undertaking work to consider extending the schools asymptomatic testing programme to the S1-3 cohort [NR6/073 – INQ000571179]. Ministerial agreement given. The Introduction of a new testing regime, outlined in the Coronavirus (Covid-19) - testing strategy: update March 2021 [NR6/074 - INQ000351878], was designed to identify infectious Higher Education and Further Education students before they leave their current household to move to a term-time address for any essential in-person teaching. This ran as an additional safeguard alongside our current onsite lateral flow testing.
8 March 2021	On 8 March the Deputy First Minister announced that the LFD collect offer would be extended to S1-3 pupils. [NR6/075 – INQ000597261]
18 March 2021	There was a Ministerial letter to College and University Principals updating on plans for return of more Higher Education and Further Education students to in-person learning and extension of testing to staff and to colleges [NR6/076 – INQ000571170] and [NR6/077 – INQ000571171].

Date	Event
19 March 2021	There was a Ministerial update letter sent to the Education & Skills Committee, announcing an increase in the number of Higher Education and Further Education students allowed to return to campus, and arrangements made for asymptomatic testing for staff and students [NR6/078 – INQ000571172].
23 March 2021	Advice was issued to Ministers seeking Ministerial agreement to established Asymptomatic Testing sites for staff and students of HE and FE institutions to carry out twice weekly LFD tests in the FE and HE sectors [NR6/079 - INQ000244330]. This is an expansion on the earlier arrangements of LFD tests solely for university students.
25 March 2021	The Minister for Further, Higher Education and Science agreed to the proposal of established Asymptomatic Testing sites for Higher Education and Further Education staff and students.
29 March 2021	Additional test kits began to be delivered to schools for S1-3 pupil testing post-Easter break.



27 May 2021	<p>From 27 May 2021, a new DHSC digital reordering system was introduced for schools and settings to enable them to order the required number of test kits they requested direct. In the early days of the programme, test kits were delivered on a “push” basis. In very broad terms, this involved Scottish Government placing mass orders for redelivery of test kits via the UK DHSC and its representatives on behalf of all Scottish schools. The number of tests kits ordered was based on data regarding numbers of pupils and staff in schools, and estimates of test-kit use based on expected testing levels. For example, the ‘Schools asymptomatic testing- redelivery plans and school transport staff’ dated 1 March 2021 [NR6/080 – INQ000597171 ] is an update to local authorities, which made clear that orders had been placed by SG for two months’ worth of twice-weekly testing for staff and senior phase pupils, and that DHSC had confirmed this would be possible.</p> <p>This system could sometimes result in schools being left with either too many or too few test kits – this would sometimes result in schools contacting either the UK DHSC or the Scottish Government/NSS (responsibilities for this evolved during the programme), who would take forward remedial action.</p> <p>From May 2021, DHSC moved to a digital reordering system which allowed schools to place orders directly through an online portal. This allowed schools to place their own orders when they need to replenish stocks, without building up excessive stock or running out of stock while awaiting a bulk redelivery. Guidance was issued at the outset of this system for local authorities, and can be found in this local authority communication. [NR6/081 – INQ000597172]</p>
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Date	Event
	<p>In brief, at the outset of the new system in May 2021, all schools and settings received a welcome email from the Department for Health and Social Care/Test and Trace containing their Unique Organisation Number (UON). This enabled them to access the digital reordering system, so they could place home test kit orders to ensure there were enough test kits to allow testing of all staff and secondary pupils to happen on a continual basis. There were deadlines for ordering – in the initial communication, it was set out that orders placed before 5pm each Tuesday would arrive the following week. Orders placed after this time would be processed and delivered the subsequent week. The number of test kits provided for each order would enable three and a half weeks of testing, with orders able to be made every 10 days.</p> <p>Communications at the time, issued by the Scottish Government's Learning Directorate, made clear that if a school did not have enough test kits to last until a delivery could be made, they could contact NSS colleagues who would try to arrange a delivery from Scotland-specific contingency stock.</p>
June 2021	<p>Universities and colleges moved from ATS (asymptomatic testing sites) to LFD Collect. The LFD Collect model allowed students and staff to follow Scotland wide guidance to asymptotically test twice weekly. Institutions operated collection points enabling students to pick up test kits from points around university and college estates. On the return of a positive test, staff and students would follow Scotland wide guidance on accessing PCR testing and self-isolating.</p>

Date	Event
9 June 2021	The Cabinet Secretary for Education and Skills agreed to plans to prepare for testing to continue in the immediate period follow the summer break [NR6/082 – INQ000571174].
8 July 2021	Beyond Level 0 guidance on the operation of colleges, universities and CLD providers for academic year 2021/22 was published on the gov.scot website. This guidance was developed through the Covid Recovery Group.
August 2021 – April 2022	<p>From August 2021 until April 2022, twice weekly asymptomatic testing via the LFD Collect model was implemented for university and college. DHSC and the UK Health Security Agency (UKHSA) (from April 2021) led the logistical delivery of LFD Collect with DGEJ (ALS) officials acting as points of contacts to support Scottish institutions by providing advice and directing queries related to test kit order and supply matters.</p> <p>During this period, Higher Education/Further Education testing did not deviate from central Scottish Government policy. ALS official input into testing focussed on supporting institutions with queries using the LFD Collect model. Work was done through EAG/CRG/Covid leads to encourage student uptake on asymptomatic testing/compliance with taking LFDs, self-isolating when required and reporting test results to support contact tracing.</p>
4 August 2021	An update was provided to Student Information Scotland website, in advance of 21-22 academic year.
10 August 2021	Revised and streamlined guidance for colleges, universities and community, learning & development (CLD) published [NR6/083 - INQ000242276]. This has been provided to the Inquiry.

Date	Event
November 2021	<p>Winter test before travel communication materials were issued to further and higher education institutions [NR6/084 - INQ000346382]. The key messages were; (1) communicate the current Test Before Travel advice – take two tests (three days before and on the day of travel) – when travelling domestically at the end of semester one and when returning for semester two. (2) Remind students to test regularly over the festive period, particularly before socialising or entering crowded spaces. (3) Inform institutions of the ordering deadline of 7 December to ensure they receive test kits before the end of term.</p>
16 November 2021	<p>The Scottish Government published an update to Scotland's Strategic Framework, setting out the latest approach to managing the pandemic, including Test &amp; Protect. [NR6/085 - INQ000353777].</p>
4 December 2021	<p>Scottish Government announced that from Tuesday 7 December, people arriving in Scotland from outside the Common Travel Area are required to provide a negative pre-departure test. Nigeria is added to the red list from Monday 6 December. These decisions impact upon travel restrictions and self-isolation requirements for Further Education and Higher Education students.</p>
10 December 2021	<p>The Scottish Government published an evidence paper on the rise of Omicron cases and new advice to reduce the spread of the virus [NR6/086 – INQ000571181]. From Saturday 11 December 2021, all household contacts of any confirmed coronavirus case had to isolate for 10 days regardless of vaccination status – even if they initially get a negative PCR test. People were also being urged to defer work Christmas parties to slow the spread of the virus.</p>

Date	Event
20 December 2021	The Scottish Government published a letter from the Minister for Higher Education, Further Education, Youth Employment and Training on measures, including reiterating Scottish Government testing policy, to reduce transmission of Omicron variant in the college and university sectors [NR6/087 – INQ000571173].
5 January 2022	The Scottish Government announced changes to self-isolation and testing. From 6 January 2022, new cases ended self-isolation if they did not have a fever and test negative on a LFD on Day 6 and again at least 24 hours later. Anyone who tests positive on a LFD were no longer asked to take a PCR test to confirm the result. Measures were discussed at Cabinet on the 5th of January 2022. Data was provided by Covid-19 Analytical Division to support evidence based decision making . A full review of measures were subsequently undertaken at Cabinet on the 11th of January 2022. All Cabinet papers at disclosed with Annex H.
22 February 2022	Scotland's updated Strategic Framework was published [NR6/088 - INQ000343997]. This set out the future direction of testing policy, including the development of the Test & Protect transition plan.
February/March 2022	The final meeting of the Schools/ELC Asymptomatic Testing Programme Board took place in February 2022 and to oversee the Testing Transition Plan, a new Test & Protect Transition Programme Board was established in March 2022.

Date	Event
1 March 2022	<p>The Coronavirus (Covid-19): Advisory Sub-Group on Universities and Colleges (documents provided under General Disclosure) discussed the future of asymptomatic student testing on 1 March..</p> <p>There was some concern expressed around the possible ending of the 'test before travel' advice, given the potential for the mass movement of students at particular points in the year to contribute to the transmission of the virus.</p> <p>The Coronavirus (Covid-19): Advisory Sub-Group on Universities and Colleges also discussed the need for Covid surveillance in FE/HE settings. The discussion centred around the need for some level of surveillance, such as wastewater testing, to monitor both the prevalence in larger campuses or accommodation, as well as potentially identifying new variants arising from international travel. Officials with the ALS Directorate committed to work with Test and Protect colleagues on this.</p>
10 March 2022	<p>Policy advice to the Cabinet Secretaries for Education and Skills and Health and Sport on ending asymptomatic testing as part of testing transition plan.</p>

Date	Event
15 March 2022	<p>The Scottish Government's Test &amp; Protect transition plan was published [NR6/089 - INQ000235186]. The Test &amp; Protect transition plan announced routine asymptomatic testing in education settings – schools, early learning and childcare, and universities – would cease at the end of the current term. People with symptoms should continue to isolate and get a PCR test until the end of April. As set out in the Test &amp; Protect transition plan, this was linked with the scaling up of the vaccination programmes: "We are now in a very different position with population levels of immunity and new treatments significantly reducing the direct harms of the virus".</p>

Date	Event
18 April 2022	<p data-bbox="515 253 1377 387">Routine asymptomatic testing for children and young people in secondary schools and for school and early learning and wider childcare staff ends.</p> <p data-bbox="515 427 1377 1070">Guidance was updated in advance and communicated [NR6/090 – INQ000571169]. The asymptomatic testing offer continued to be made available to school and ELC staff and S1-6 pupils until 18 April 2022. The Advisory Sub-group recommended that after 18 April 2022 it would be appropriate to devolve more autonomy and flexibility on decision-making relating to the management of Covid-19 safety to local authorities and settings, with the right support and guidance. In recognition that head teachers, setting managers and staff are best placed to understand the unique circumstances that they operate in and the needs of the families they support, and therefore to make their own judgements about risk assessment and how to operate safely within the parameters of this guidance.</p> <p data-bbox="515 1140 1377 1328">It was announced as part of the Test and Protect transition plan that routine asymptomatic testing in education settings – schools, ELC, and universities, and the wider childcare sector – would cease from 18 April 2022.</p>
30 April 2022	<p data-bbox="515 1350 1377 1451">Mass symptomatic PCR Covid-19 testing in Scotland ended, and testing sites closed.</p>

144. A full list of guidance provided by the Education Directorates has been provided to the Inquiry under general disclosure. Further information on advice, guidance and support is included within the chronology above.

145. At the outset of the schools asymptomatic testing programme, local



authorities and schools were provided with detailed implementation guidance, which included a clinical Standard Operating Procedure, a How To Guide, Instructions for Use for the at-home test kits, an FAQ, template communication letters and consent forms, a standard privacy notice, and posters/communication products. Scottish Government officials also engaged closely with local authorities and schools to ensure the right number of test kits were provided to schools, based on the correct number of children and staff in those settings, including backroom staff in schools. In the early days of the schools asymptomatic testing programme, as noted above, test kits were delivered on a “push” basis. To support accurate estimates of test kit numbers required, the Scottish Government engaged with local authorities via meetings and email communications to gather improved data on the number of staff and pupils requiring test kits. An example of the data gathered over time to support this is available here [NR6/091 – INQ000597175]. We also provided an email address which was shared with all schools so they could contact us directly with any test kit supply issues.

146. As an example of the kind of engagement that supported delivery of the programme, in order to ensure test kits were available at or near the delayed start of term, initial deliveries of test kits to schools were made from 8 February 2021. This was problematic for local authority areas and schools who were on February break during those weeks. The joint Scottish Government Learning Directorate and Health team worked with colleagues in ADES Resources to ensure that local arrangements were put in place to allow test kits to be received into schools that were closed, so that the ability to start testing was not delayed due to delivery issues. This involved, for example, agreeing with individual schools that janitors would be onsite during the break to receive deliveries. Enquiries or issues raised by individual schools (e.g. as a result of delayed deliveries due to extreme weather conditions) were dealt with by the joint project team and/or DHSC responding to emails or speaking on the phone to identify solutions.

147. All school and childcare testing leads were provided with access to the Objective Connect system (a secure, cloud-based file sharing and collaboration platform), through which updated guidance and standard operating procedures could be disseminated. The Scottish Government project team also sent regular email communications to local authority testing leads, for onward dissemination to school and ELC staff. An example of a communication that demonstrates how the Scottish Government worked with local authorities and schools to manage issues around test kit deliveries is available here [NR6/092 – INQ000597176].
148. From 27 May 2021, a new DHSC digital reordering system was introduced for schools and settings to enable them to order the required number of test kits they requested direct. More information on the Digital re-ordering system and how it was different to the previous one is provided in the table above at paragraph 143, under the entry for 27 May 2021. The relevant guidance is also attached there. Guidance was updated in advance and communicated. To support effective communication with senior phase pupils, the Scottish Government worked with YoungScot to develop an online campaign and FAQ resource. These materials were updated regularly to ensure adherence to the latest health advice at different stages of the pandemic.
149. YoungScot is a national youth information and citizenship charity in Scotland. The Scottish Government worked with YoungScot to promote information to young people about the return to school, Covid 19 and school safety, and asymptomatic testing. The initiative also led to the YoungScot digital communications toolkit (an example of which is available below - [NR6/093 – INQ000597198]) and ensured that packs of communication materials aimed at young people were provided to schools.

150. YoungScot also supported the Scottish Government to engage directly with young people to raise awareness of the testing programme and understand their views in order to improve it. For example, on 23 March 2021, Jason Leitch, in partnership with Young Scot, hosted two live Q&A sessions for young people regarding the testing programme on the e-Sgoil platform, which is a national e-learning service established in 2016 in the Western Isles of Scotland. This document “Survey Results: Tell us Your Thoughts on Young Scot's & Scottish Government's Back to School Campaign”, provided [NR6/094 – INQ000597178] includes feedback received on YoungScot support.
151. With regard to boarding or residential school, specific guidance (non-statutory) was supplied by the Scottish Government (for example [NR6/095 - INQ000571148]). However, the approach to Test and Protect was the same as that taken by local authority schools in Scotland.
152. There was also engagement and alignment as appropriate in relation to detailed advice and guidance to the education and childcare sector as detailed in paragraphs 363-385. ELC Directorate issued regular targeted communications to the childcare sector through Care Inspectorate provider notices, via the Scottish Government website and objective connect, to those who signed up to receive testing kits. Where TTI measures came into force or changed at national level, they were communicated via these channels. An example of messaging relating to access to testing can be seen here [NR6/096 – INQ000597179].
153. All guidance published and updated for early learning and childcare services, school age childcare services and childminders, from May 2020 onwards, signposted to and, referenced the importance of setting managers and staff adhering to wider national guidance on testing. References to wider national guidance on testing were also

included in monthly newsletters from Early Learning and Childcare Directorate issued to the sector and published on Scottish Government webpages. In August 2021 template letters were provided to childcare settings so that they could provide detailed guidance to parents and carers in cases where children tested positive, as well as inform parents and carers in instances where ELC practitioners tested positive, provided [NR6/097 – INQ000597180] and [NR6/098 – INQ000597181].

154. The same communication approach was also true of Further and Higher Education, and promotion materials also included a communication pack with social media content guidance. Toolkits and marketing campaigns went out across 2020/21 aiming to encourage students to get vaccinated, including an adaptation of the 'roll up your sleeves' campaign for a student audience. All of these were circulated amongst the university/college audience as well as National Union of Students Scotland, Universities Scotland and Colleges Scotland.

155. In addition, the Coronavirus (Covid-19): Advisory Sub-Group on Universities and Colleges considered Scottish Government testing policy (including current messaging and any policy changes) for the interests of college and university students and encouraged institutions to develop their own materials. All minutes for this meeting have been provided under general disclosure.

156. The Coronavirus (Covid-19): Advisory Sub-Group on Universities and Colleges published a number of advisory notes to the further and higher education sector to inform their management of the pandemic, an overview of the sub-group and list of minutes are provided under general disclosure, most of these make reference to communications. The purpose of the advisory notes was to support Further and Higher Education Institutions in their decision-making in relation to managing the pandemic and putting in place arrangements to facilitate a safe return to in-person learning,

managing associated risks, and to support Scottish Ministers with their own decision-making, example provided [NR6/099 – INQ000597182].

157. In addition to this, two members of the Expert Advisory Group (Professors Paul Flowers and Steve Reicher) had specific expertise in communications and led on a Communications Roundtable event with stakeholders on 5 August 2021.

158. Guidance was published and updated respectively for early learning and childcare services, school age childcare services and childminders to reflect the different ways in which they operated. From May 2020 onwards the respective guidance signposted to and, referenced the importance for setting managers and staff to adhere to wider national guidance on testing. References to wider national guidance on testing were also included in monthly newsletters from the Director for Early Learning and Childcare Directorate, issued to the sector and published on Scottish Government webpages. Guidance to the ELC sector evolved over time in line with the wider health guidance, including in respect of testing. Targeted communication on changes to guidance were circulated via newsletters to all sector representative bodies, local authorities and Directors of Education. Examples can be seen here: [NR6/098 – INQ000597181, NR6/100 – INQ000597183, NR6/101 – INQ000597184 and NR6/102 – INQ000597185].

159. The ELC Directorate did not make comparisons between guidance for Scottish service providers and guidance provided by the other UK Administrations for the needs of their sectors. Scotland deliberately considered different approaches to guidance and pandemic management due to differences in transmission rates and differences in childcare provision.

160. Guidance for early learning and childcare services, school age

childcare services and childminders were routinely updated to reflect changes on national TTI measures and policies. The CRG, brought together Scottish Government officials and childcare sector representatives to ensure that partnership working took place as we responded to the Covid-19 pandemic. The group oversaw changes to guidance for the sector in light of national TTI measures and policies. Examples of changes to ELC guidance are provided [NR6/103 – INQ000597186] and [NR6/104 – INQ000597199] reflecting the strategic framework and the approach that should be taken by the sector at each level, and guidance on face coverings, singing, shielding, test and protect and outbreak management, international travel and quarantine, PPE and action to be taken in the event of illness of a child, childminder or assistant.

161. Changes to ELC guidance in December 2021 in light of the Omicron variant, providing guidance on minimising child to child and staff to staff contact through the use of groupings in indoor spaces, 'virtual' visit by parents, visits to settings by specialist staff, use of peripatetic or agency staff, those on the highest risk list, ventilation, assessment of spaces, self isolation, day visits and asymptomatic testing, provided [NR6/105 – INQ000597187]

162. The Scottish Government produced a summary report on the Schools/ELC asymptomatic testing programme [NR6/106 – INQ000571150]. A report gave an overview of the findings from seven separate surveys which ran in April and May 2021, relating to the schools and ELC asymptomatic Covid-19 testing programme. The surveys sought feedback from those involved in the testing programme to identify areas for improvement as the programme was expanding and developing. Two waves of survey work were undertaken in April and May 2021. Wave 1 surveys were open from 9 to 20 April. These surveys sought feedback from:

- Local authority representatives with responsibility for managing the testing programme at the local authority level; and
- School/childcare setting representatives with responsibility for overseeing the testing programme at the school/setting level.

163. In Wave 2, between 11 and 23 May five surveys were undertaken. As in Wave 1, feedback was sought from those responsible for overseeing the testing programme at the local authority and school/childcare setting levels and, in addition, feedback was also sought from those eligible to participate in the testing programme – i.e. staff and secondary school pupils (and their parents/guardians).

164. A convenience sampling approach was adopted in order to identify areas for improvement as quickly as possible as the testing programme was being rolled out. As such, the samples for these surveys were not representative, and therefore it is important to bear in mind that the findings are not generalisable to the whole population. Advice to the Cabinet Secretary for Education and Skills dated 14 December 2021 [NR6/107 – INQ000597188] contains the full details of the surveys, provided [NR6/108 – INQ000597260].

165. Key findings included largely positive feedback on the guidance provided to local authorities and schools/settings about the testing programme with all local authority respondents agreeing that the rationale for the testing programme was clear; more than 80% of local authorities indicated that the process of getting test kits out to schools/childcare settings was straightforward, and that most staff and young people were participating in the testing process. Some critical feedback was received in relation to the Schools Asymptomatic Testing Programme. This related to the areas set out below:

### Guidance

166. In wave 1 surveys (April 2021), a small number of local authority representatives (less than 10%) indicated that they disagreed that guidance on some areas was clear – mainly test kit supply issues (information about when schools/settings in their local authority would receive test kits, how many test kits schools/settings would receive for staff and pupils, etc.). A fifth of respondents disagreed that the guidance was clear on what to do if schools/settings received too many test kits.

### Supply & delivery of test kits

167. A minority of those who responded to the survey for school/childcare setting testing leads reported some issues relating to supply and delivery of test kits during the period covered by the surveys (for example, 3% reported receiving too many test kits for staff).

168. Around two-thirds of local authority leads and one third of school/childcare setting testing leads indicated that the testing programme could be improved by allowing schools/settings to reorder test kits.

169. A majority of local authority respondents agreed that additional staffing resource to deal with the administrative burdens of the programme in schools could help to improve the testing programme. In the wave 2 surveys (May 2021), the most common issue reported by both local authority and school/childcare setting representatives regarding the supply and distribution of test kits was receiving too many test kits for staff during the period covered by the surveys (i.e. May 2021).

### Non-participation and barriers to participation

170. Around a third of those who responded to both the pupil and parent/guardian surveys in wave 2 indicated that they (or their child/ren) were not currently taking part in the testing programme. Common reasons for not participating in the testing programme include that respondents did not know about the



testing programme, they had heard that the test was uncomfortable/unpleasant, and concerns about the accuracy of the test.

171. In relation to potential barriers to participation in the testing programme identified by the Wave 2 survey data, these included concerns about the accuracy of the test, concerns about the test being uncomfortable or unpleasant, and a lack of encouragement or practical support at home to do the tests.

172. In wave 1 surveys, 15% of school leads and over a quarter of local authority respondents indicated that the testing programme could be improved by providing help for pupils who do not have someone at home who can help them do the test.

173. The Scottish Government used the findings of these surveys, along with additional stakeholder feedback through fora such as the Covid-19 Education Recovery Group, to make improvements to the Schools/ELC asymptomatic testing programme, working closely where appropriate with the UK Department of Health and Social Care. These include improved communications products and guidance, improved processes for schools/settings to reorder test kits, sharing of good practice, provision of new (nasal-only) test kits, and improvements to the UK Government digital reporting portal.

174. As the programme matured, regular updates were also provided by PHS to the Covid-19 Education Recovery Group, the Schools Asymptomatic Testing Programme Board, the Registered Childcare: Covid Impact Group and local authorities and schools on uptake of the testing offer, reporting of results via a UK Government online portal, and the numbers of staff and pupils testing positive. In general, these data showed significant variation between local authorities in terms of uptake and reporting, with a general decline in reporting over the lifetime of the programme, and there was an ongoing focus on improvement, for example through strengthened communications or

streamlined procedures (e.g. simplification of test kit log or consent procedures). Further information on these updates and the possible reasons behind these trends would be available from Public Health Scotland.

175. The Schools Asymptomatic Testing Programme Board, as outlined in the timeline above, was established in December 2020 and met for the first time on 18 December. The Board was set up at this time due to the increased focus on testing requirements and the planned roll-out of pilots and a scaled up offer across schools. It included representatives from key Scottish Government policy areas (e.g. health and analytical services), DCMO, COSLA, PHS, ADES, Education Scotland, and NSS Information Security and Governance. The Board was a governance forum, reporting to the Testing Operational Delivery Group (TODG). Its role was to:

- Provide strategic oversight and evaluation of piloting work on asymptomatic testing in schools, receiving regular reporting, sharing learning and offering challenge and advice to support delivery.
- Contribute to effective risk management, including by regular consideration of the programme risk register; and
- Oversee the development of scale up and roll out plans as appropriate, drawing on learning from pilots and other evidence.”

176. The agenda and papers for the first and second meeting of the Board can be found here [NR6/109 – INQ000597189 and NR6/110 - INQ000597193]. The second meeting papers contain a note of the meeting on 18 December.

177. The Board’s initial Terms of Reference, which evolved during the pandemic (including expanding to cover ELC testing), were agreed at meeting 2 on January 15, provided above [NR6/110 – INQ000597193].

These stated:

“The Programme Board will bring together key partners to ensure that Scotland’s approach to asymptomatic testing in schools is:

- Informed by evidence and expertise, including by ensuring the views of health, education and local authority partners are heard;
- Clinically approved, with clinical expertise provided via the Deputy Chief Medical Officer’s membership of the board;
- Coherent with wider work on asymptomatic testing in the community, and wider work on reducing risks in schools; and
- Realistic and deliverable within capacity constraints and other pressures on the health and education systems, including school staff workloads.

178. The Board secretariat supported information flows between the Board and other key groups, including the Covid Education Recovery Group. It was formally accountable to the Testing Operational Delivery Group (TODG), with the chair invited to attend TODG (currently chaired by senior Scottish Government health officials).

179. Regular dashboard summary reports for Schools Asymptomatic Testing were submitted to the TODG, example of dashboard is displayed below

## Covid-19 Education Recovery Group - Infographic

In the week ending 28th March 2021:

- The rate of testing was 989.1 per 100,000 children and young people aged 2-17 years.
- The percentage of tests that were positive was 5.9% in those aged 2-17 years; a decrease from 8.1% last week.
- The identified COVID-19 positive cases reflected a rate of 77.9 cases per 100,000 2-4 year olds, 115.6 cases per 100,000 5-11 year olds 76.2 per 100,000 12-15 year olds and 102.1 cases per 100,000 16-17 year olds. The rate of cases per 100,000 of the general population was 65.1.

On 30th March:

### Primary Schools:

- Attendance in Primary schools was 91.8%.
- Absences (authorised and unauthorised) because of non Covid-19 related reasons were reported at 5.5%.
- 9,140 pupils were not in school either all or part of the day because of Covid-19 related reasons.
- The percentage of school openings (i.e. half days) that showed pupils were not in school because of Covid-19 related reasons was 2.8%.

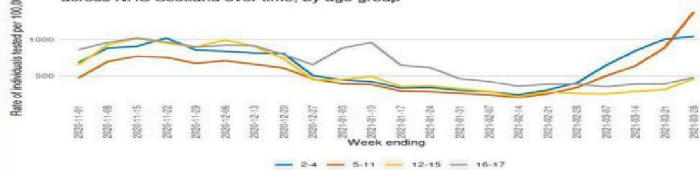
### Secondary Schools:

- The percentage of Secondary (S1-S6) pupils physically in school in the morning was 26.4%. In the afternoon this figure was 23.8%.

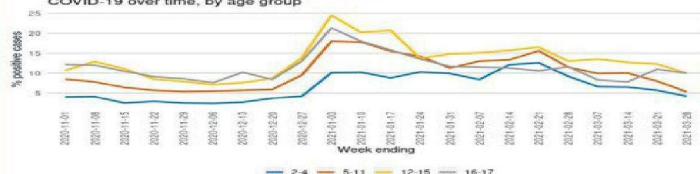
### Special Schools:

- In Special schools, the percentage of pupils physically in school was 66.8%.

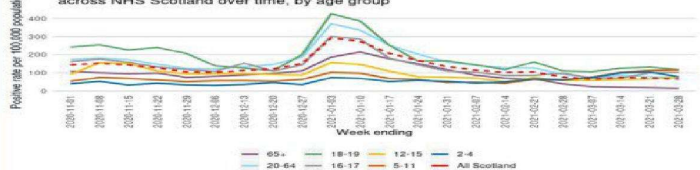
Rate per 100,000 of individuals tested for COVID-19 across NHS Scotland over time, by age group



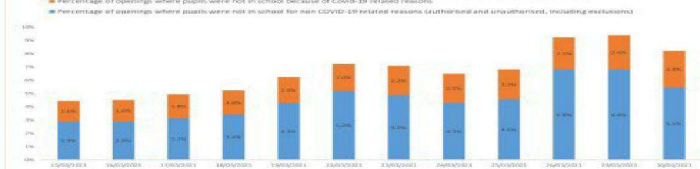
Percentage of tests that had a positive result for COVID-19 over time, by age group



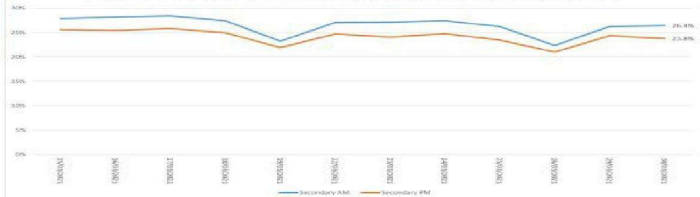
Rate per 100,000 population of positive COVID-19 cases across NHS Scotland over time, by age group



School absence rate: COVID-19 and non COVID-19 related reasons - Primary only - 15 March onwards



Percentage of pupils in attendance in secondary school, 15 March onwards

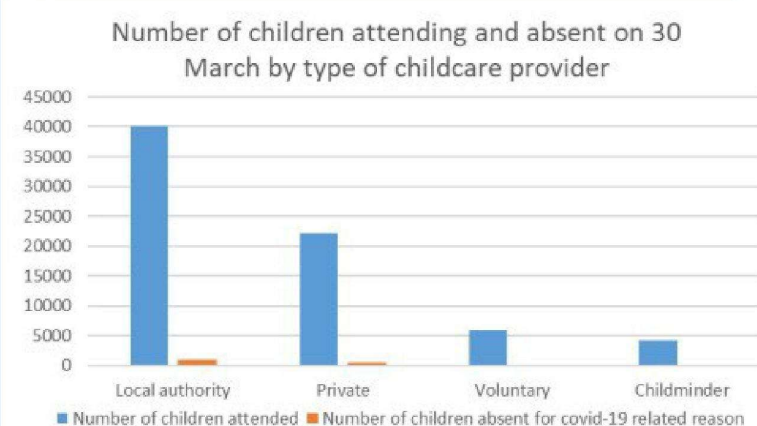
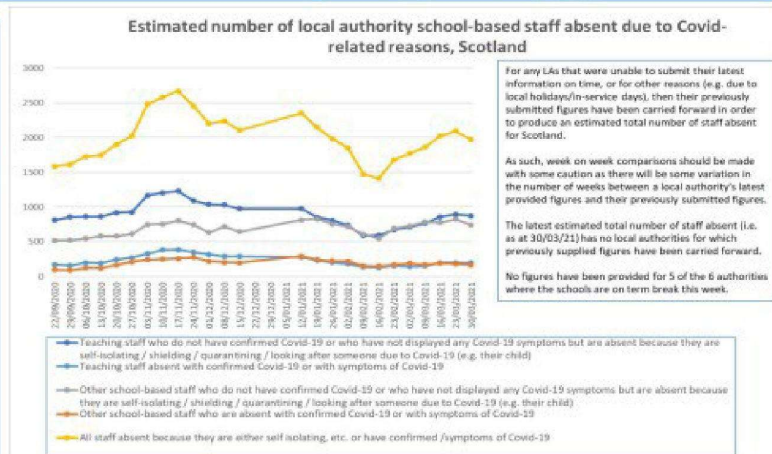


## Covid-19 Education Recovery Group - Infographic

- From Monday 15 March all children in Primary school were to return to school, with all Secondary pupils returning part-time from this date.

On 30th March:

- 1,969 staff were absent due to Covid-19 related reasons, of which, 1,064 were teaching staff and 905 were other school-based staff.
- 72,218 children were attending a childcare setting and 1,515 had a Covid-19 related absence. Note that not all open settings completed the survey and that these figures are an underestimate of the actual number of open settings and children attending.
- This week, 717 (3.6%) childcare staff were absent due to Covid-19 related reasons [based on a 50% response rate]



180. The Board played a role in providing feedback to Scottish Government officials on the way in which the programme was operating in schools, and in supporting the development of recommendations to help improve uptake and reporting later in the pandemic.
181. In addition PHS colleagues presented regularly at the Schools/ELC Asymptomatic Testing Programme Board on trends around testing, reporting, positivity etc. This information was also shared regularly with local authority contacts to help them understand which areas

were seeing higher and lower uptake of testing. An example of such a communication is here, [NR6/111 – INQ000597200].

182. The Higher and Further Education sector, as with every other testing pathway, had its own Standard Operating Procedures (SOPs) that were signed off by clinicians. However, these did not cover outbreak management processes. The table at paragraph 365 of the DG Health and Social Care statement for Module 7 (M7DGH01) lists all SOPs. Outbreak response, including contact tracing, fell under the remit of local public health teams and is governed by health protection national guidance rather than Covid testing SOPs.

183. Other than early testing offers involving PCR testing for school staff, and the pathfinders set out in the timeline earlier in this submission, the at-home LFD asymptomatic testing programme was the only testing programme provided within local authority schools and early learning settings. There were also some bespoke arrangements for independent boarding schools, in addition to the at-home LFD testing offer, which reflected the residential nature of those schools. Outbreak response, including any enhanced testing response, was the responsibility of local public health teams rather than the asymptomatic testing programme.

184. There were asymptomatic testing programmes in early learning settings, schools, colleges and universities.

185. In universities, there were symptomatic testing routes with PCRs and use of local testing sites and a PCR distribution and collection pathway. Universities also had a test before travel pathway for home PCR testing.

186. The advice provided by officials to Ministers on 12 January 2021 [NR6/060 - INQ000243253] set out that the new Omicron variant emerging at that point had introduced some uncertainty as to whether

the existing package of mitigation measures in schools would be sufficient to maintain the previous low-risk environment, and stated that work was ongoing to consider what enhancements may need to be put in place. The advice was developed by schools and testing policy officials, with input from Deputy Chief Medical Officer, and NHS National Services Scotland. It suggested that testing could have a role to play in supporting this in two distinct ways:

- By enhancing the ability to use testing in schools as a case-finding tool to enable asymptomatic cases which would not otherwise have been found to be identified, allowing action to be taken to reduce the risk of onward transmission.
- By improving the confidence of staff by enabling them to access regular asymptomatic testing. In addition to the case finding benefit, it was hoped that regular negative tests would provide confidence around the efficacy of school/setting safety measures, and thereby provide staff with confidence that they have not become infected if they test negative.

187. In so doing, the programme aimed to contribute to work to ensure that Scotland's schools, ELC and school age childcare settings remained safe, open and welcoming. It was also considered a key priority at that time to keep schools open, given that had a significant public health benefit for children and young people, and teacher union and other stakeholder feedback at the time was that testing (as part of the wider package of measures in schools) would play an important role in that.

188. These were, broadly, the key purposes of the schools/ELC asymptomatic testing programme during its lifetime.

189. Many adults are required to be present in a setting in order for education to be provided to children. The safety of adult staff, as well as that of children and young people, required to be given careful

consideration when deciding which safety mitigations should be put in place to enable a return to face-to-face learning.

#### Access and supply

190. Learning Directorate officials worked closely with DHSC representatives to support the logistics around initial test kit deliveries in February 2021, including through regular liaison with local authorities and schools and the provision of delivery addresses to DHSC's supplier. As the programme evolved, the process for schools and early learning and childcare settings to reorder test kits when required was improved, with schools/settings enabled to do so via an online UK Government portal using a unique identification number.

191. From March 2021, once officials secured Ministerial agreement to establish asymptomatic testing sites on all campuses for the regular testing of staff and students in the FE and HE sectors, officials subsequently worked closely with DHSC representatives to support the logistics around initial test kit deliveries, including through regular liaison with local authorities and schools and the provision of delivery addresses to DHSC's supplier.

192. The testing programme operational board managed and monitored stocks of tests kits for Scotland as a whole and negotiated with UKG on allocation levels and supplies. Following the initiation of the schools asymptomatic testing programme, which was concerned with testing measures for Scottish primary, secondary and special schools, and ELC and SACC settings and which made use of LFD tests, no major shortages of test kits were experienced. From May 2021 guidance was circulated to schools and childcare settings on how to report and mitigate test kit shortages. There were isolated occasions, particularly in the early days of the programme, when schools did not receive scheduled deliveries or failed to reorder in line with deadlines.



When this occurred, Learning Directorate liaised with the schools and DHSC to ensure that replacement kits were provided as quickly as possible.

193. Between January 2020 and the end of LFD Collect there were minor local shortages for FE or HE which were addressed with either emergency deliveries arranged through UKHSA/DHSC or in very limited cases, other local institutions redistributing kits. There were LFD test-kit supply issues with some colleges within University of Highlands and Islands (UHI). Institutions within UHI redistributed kits on a short-term basis while UKHSA/DHSC deliveries were arranged. As this was resolved locally and only raised in routine engagement, it required no further escalation or ALS input. These issues were raised in operational meetings , specifically during the regular meeting with UKHSA LFD Collect leads for Scottish education settings which involved the Scottish Government Learning Directorate and ELC colleagues. NHS NSS colleagues would also attend and provide updates as they managed the call centres which Scottish education settings could contact with any LFD Collect supply queries. Actions from these meetings were not recorded. For FE and HE the end of the provision of LFD collect was the end of academic year 2021-22, which varied by institution.

194. In implementing the LFD Collect model, the role of officials within the Advanced Learning and Science Directorate was to engage with UKHSA/DHSC and Scottish Government testing policy teams to escalate support for institutions requiring urgent support or facing challenges in ordering test kits.

#### Surge testing and hot spots

195. With regard to “surge testing” and “hot spots”, outbreak management in all schools was handled by NHS Health Board local health protection teams (HPTs). There was no specific role for Learning

Directorate. The term “surge testing” was not used in school safety guidance, which aimed to avoid technical language wherever possible. In the event of a significant outbreak, schools were supported by their local HPT to introduce further mitigations (as HPT advise) for a temporary basis and while that outbreak is managed – this could include enhanced testing. Where that was the case, local HPTs supported schools and helped ensure that any temporary mitigations were necessary, sufficient and proportionate dependent upon local circumstances.

196. Surge testing was not carried out in schools. Decisions on whether to deploy enhanced testing approaches (beyond the universal testing offer) were for local public health teams to make, in coordination with the relevant school. Nor did the Education and Justice Directorates have a role in implementing surge testing. When any significant outbreak occurred, expert local public health advice was provided to help schools manage the situation. The threshold for notification of outbreaks to public health colleagues was set out in versions of the school safety guidance and changed over time. For example, in February 2021 the guidance read as follows:

*“The management of outbreaks (if schools have two or more confirmed linked cases of COVID-19 within 10 days) and cases of infectious disease in schools is led by local health protection teams (HPTs) alongside local partners, such as schools and local authorities. Schools should ensure that they know how to contact their local HPT and who will usually be responsible for doing so.*

*The procedures for outbreak management [NR6/112 – INQ000597203] are well established. Public Health Scotland now ask that if there is either a single confirmed (test positive) case of COVID-19 or any suspicion that there may be an outbreak of cases in a setting (e.g. an increase in background rate of absence due to suspected or confirmed cases of COVID-19), schools should make prompt contact with their local HPT and local authority so they can assess the situation and offer advice. Note that settings with increased rates of respiratory illness should also be alert to the possibility that this could be due to COVID-19 and contact their local HPT for further advice.*

*Schools and local authorities will be expected to work closely with their local HPT to resolve the situation. COSLA and Public Health Scotland have developed a national toolkit for managing cases and outbreaks in schools, provided NR6/113 –*

INQ000597204] Actions that they may need to be involved in include (but are not restricted to):

- attendance at multi-agency incident management team meetings
- communications with children, parents/carers and staff – these are vital to provide reassurance to school communities
- providing records of seating plans / school layout / attendance / groups
- implementing enhanced infection, prevention and control measures

The HPT will lead the incident management team (IMT) and agree control measures on self-isolation and on testing of children and staff and the arrangements for doing this. The IMT will discuss and agree additional measures to deal with the specific situation faced in a school. These may include reviewing risk assessments and compliance with existing guidance, increased cleaning regimes, the greater use of face coverings, reviewing and reducing higher risk activities, and/or moving to remote learning approaches. Any discussion of possible school closures will be determined through the multi-agency IMT.

Schools should maintain appropriate records to support outbreak control measures, e.g. children, young people and staff attendance, details of pupil groups, seating plans, visitors to schools, and clinically vulnerable/extremely vulnerable children and young people who are attending school.

In order to protect pupils and staff and to maintain access to education, confirmation of pupils or school staff with a confirmed COVID-19 test or who have been instructed to self-isolate should be shared in confidence by NHS Scotland and/or Public Health Scotland with the relevant school. To ensure this information is handled in accordance with data protection requirements, local authorities should ensure that an appropriate Data Protection Impact Assessment is in place and that the data handling arrangements in their schools are compliant. A framework data sharing agreement has been developed by Public Health Scotland and local government, which local authorities are encouraged to support and consider when framing their own data handling arrangements and impact assessments”.

197. There was specific consideration given at a meeting under the Schools Asymptomatic Testing Programme Board to the role that enhanced testing could play in management of outbreaks in schools in January 2021, [NR6/114 – INQ000597205]. Ongoing feedback and advice from public health professionals of this kind would have informed the contents of school safety guidance over time. It is important to note that the guidance set out above evolved over time, as the pandemic progressed and understanding of impacts on children and

young people grew. The management of single cases, clusters and outbreaks of Covid-19 was led by local health protection teams (HPTs) in health boards.

198. School safety guidance made clear that increased testing was one of a suite of measures that could be deployed by health professionals for outbreak management purposes if this was deemed necessary in their expert judgement. The directorates relied on information from health colleagues and PHS in relation to specific outbreaks which was shared with colleagues across the Scottish Government through regular reporting.

199. The Advanced Learning and Science Directorate were not always made aware of incidents in FE and HE settings as the response was local. Outbreaks were managed by the appropriate local Incident Management Team, with the Outbreak Management Response team in the Directorate for Public Health keeping ALS informed as appropriate. Any incidents the directorate were aware of were communicated via the Covid Outbreak Management Team within DG Health and Social Care.

200. In September 2020, there were a number of high profile outbreaks in university halls during fresher's week. These have been documented publicly through the news. Public Health Scotland also published two reports about these outbreaks. [NR6/115 - INQ000571149].

201. Following the arrival of the second wave of Covid-19, the Scottish Government's Advanced Learning and Skills Analysis (ALSA) unit established a new data collection and monitoring system, to track how many cases of Covid-19 were at each university and college across Scotland, identify any outbreaks, and how the institution was responding to the outbreaks. Prior to September there was limited in-person learning. As such, there was little demand to collect data. In September 2020, there were several high-profile outbreaks in University halls during fresher's week. These were documented

publicly through the media. These outbreaks served as a prompt for the Directorate to request regular data from institutions. ALSA took on the task of accumulating responses. These data collections captured the following information:

- The new number of students and staff who had tested positive for Covid-19 since the previous collection, and where these cases had occurred (in university maintained halls, purpose built student accommodation halls, or out with).
- Which student halls had been affected by new cases.
- The total number of students and staff positive Covid-19 cases.
- The new number of students and staff self-isolating following exposure to an individual with Covid-19 since the previous collection.
- The current total number of students and staff self-isolating following exposure to an individual with Covid-19.
- The current number of international students quarantining.
- The number of students withdrawing from halls or terminating residency agreements.

202. ALSA engaged with policy and ministers to keep them up to date with the rapidly changing situation. There were no requests for ALSA to publish it from stakeholders or potential users. ALSA proactively started publishing high-level numbers from the collection once it was established and other areas of the Scottish Government started publishing their new data collections. Given the scale of the initial outbreak, this data collection ran twice weekly, on a Tuesday and a Friday throughout the rest of 2020, before switching to weekly in 2021.

203. Public Health Scotland (PHS) was responsible for outbreak response and surge testing and the analysis of their response to this, therefore the Scottish Government Education and Justice Directorates do not hold any information of analysis of the effectiveness of surge testing.

204. In relation to the Schools/ELC Covid-19 Asymptomatic Testing Programme, in December 2021 the Scottish Government published a report which brought together the findings from seven separate surveys, which ran in April and May 2021 (see paragraphs 162-165). The surveys sought feedback from those involved in the testing programme in order to identify areas for improvement as the programme was expanding and developing. [NR6/106 - INQ000571150].

205. The Scottish Government also received regular (weekly) reports from PHS about the uptake of tests and reporting information, numbers of positive cases, etc. which were relayed to local authorities in regular updates. This published analytical evaluation report on testing fed into our understanding [NR6/116 - INQ000571139].

#### Data and modelling

206. From the outset, information flows to colleagues in DG Education and Justice were established via the SGoRR structures. This meant that key information from the UK Government (for example, SAGE advice) to SGoRR was shared with DG Education colleagues where appropriate.

207. DG Education and Justice drew data from a range of sources. For example, Covid-19 data on testing and cases was provided by Public Health Scotland (PHS). Existing data was also interrogated to draw new intelligence relevant to policy, modelling and testing, for example, numbers of students travelling across Scotland for university provision. Data was also published by DG Education and Justice, either stand-alone or as part of wider Scottish Government data releases on Covid-19.

208. Education providers, local authorities and public bodies provided

data that allowed officials to understand the real-time impact of Covid-19 on education. In addition, data on the direct and indirect effects of Covid-19 on child health and paediatric service use was monitored and a regular briefing was provided on this weekly from May - July 2020, and then monthly from July 2020 to October 2021. Examples are [NR6/117 – INQ000597207, NR6/118 – INQ000597227 and NR6/119 – INQ000597243].

209. The frequency of data collection differed between each area and depending on the number of restrictions in place. For universities as an example, some data was collected weekly and others bi-weekly, and frequency depended on whether it was during term-time. Data collected included; known Covid-19 cases, numbers self-isolating and of those, how many were staying in university halls. Daily data on pupil attendance was provided by local authorities and weekly data on teacher (and staff) absence was provided by the local authorities.

210. Routine data was provided by the Care Inspectorate on the impact of the pandemic on the childcare sector, including details of settings closures. Data from childcare providers was collected on child attendance and absence at childcare settings, initially daily, with the frequency reducing throughout the pandemic.

211. Local authorities and Police Scotland initially provided data on child protection registrations and children entering care on a weekly basis, though the frequency later reduced to fortnightly.

212. Statistical modelling was carried out by a centralised Scottish Government resource, the Central Analysis Division. Information from this modelling was considered by the relevant governance groups alongside other sources of data and evidence, to inform recommendations. Some specific education scenarios or options were modelled when relevant. Modelling was also used to provide

wider understanding to local policy teams and wider stakeholders.

213. The principal sources of data included:

- PHS weekly data that included testing and Covid-19 cases. This included weekly data and analysis for Education and bespoke analytical contributions (e.g., specific analysis on outbreaks on student halls in December 2020 and October 2021)
- PHS data on child health and paediatric service usage
- HESA University and SFC College student data (various years)
- ALSA (SG) University and College Covid-19 Data Collection (biweekly, weekly, ad hoc)
- University LFT Testing Site data and survey feedback from testing leads
- ONS Student Insight Survey
- Student hardship case studies research work
- Care Inspectorate data on impact of the pandemic on operation of Early Learning and Childcare services
- Data provided by local authorities and childcare settings on attendance and absence at childcare
- School attendance data
- The school's collection and the childcare monitoring survey
- Child protection and looked after children data gathered from local authorities and Police Scotland, including new data on contact between professionals and children with a child protection or multi-agency plan whilst Covid-19 restrictions were in place.

214. As the pandemic developed, the Covid-19 health protection measures also changed, so data collection also changed to collect the most appropriate data for monitoring and developing policy. For example, the university collection originally ran twice weekly during the start of the 2020-21 academic year due to increased number of Covid-19 cases in student halls. It collected known



cases, numbers in halls and halls affected by new outbreaks amongst other data. The collection evolved at the start of 2021 as limited numbers were on campus and hence started collecting additional information on those returning and why. The collection changed again in 2021-22 with more students on campus to concentrate on new outbreaks and known issues. Similarly, the vulnerable children collection reduced frequency and ceased collecting data about contact after these data had stabilised at a later stage of the pandemic. Data on childcare attendance and absence adapted throughout the pandemic, e.g. initially focusing on attendance at critical children among vulnerable children and children of keyworkers, to focusing on the impact of the pandemic on the sector (including data on absence rates due to Covid-19, and the risk of closure to settings). There were further changes to this data collection when widespread testing ceased.

215. Scottish Government officials likewise sought information to help feed into the modelling undertaken by decision makers and advisors in health but also to help us understand the issues facing the sectors. We were helped by modelling supplied by Public Health Scotland (PHS) on the epidemiology of the outbreaks to inform decisions around influencing the movement of the student population across the country. PHS also undertook focus groups to better understand their perspectives. Both the Deputy Chief Medical Officer and PHS were consulted by officials for the advice that was passed to Ministers relating to, for instance, the guidance around students leaving at the end of term and returning afterwards. The on-campus testing provision made available to staff and students (and the public) and associated guidance was also informed by their input and their colleagues.

#### Test outcome data and reporting

216. The model adopted by the schools/ELC asymptomatic testing

programme was one involving distribution of LFD test kits to staff and pupils within schools, and staff in early learning and childcare settings, who were then encouraged to test regularly at home and report results via a UK Government-operated online portal. Learning Directorate had not been involved in processing tests or reporting results.

217. As noted in section D, At the outset of the schools/ELC asymptomatic testing programme, local authorities, schools and early learning and childcare settings were provided with detailed implementation guidance, which included a clinical Standard Operating Procedure, a How To Guide, Instructions for Use for the at-home test kits, an FAQ, template communication letters and consent forms, a standard privacy notice, and posters/communication products.

218. Within DG Education and Justice, the existing Education Analytical Services Division (EAS) was responsible for providing analytical support in monitoring the impact of Covid on the provision of ELC and school education - by measuring attendance at ELC and schools, staff absences, and closures of settings. This was reported on [www.public.tableau.com](http://www.public.tableau.com), a free platform for publicly shared data visualisations online [NR6/120 – INQ000597245]. EAS also provided analytical support in monitoring of the number of vulnerable children and young people by children services. EAS largely comprises of analysts (statisticians, social researchers and economists) within the SG. Their role and remit was to gather and analyse regular and timely data on education services.

219. The EAS had no responsibility for test reporting or analysis of schools testing data. It did, however, play a role in evaluating the running of the programme.

220. PHS provided regular reporting on the number of tests reported via

the UK Government online portal, as well as the number of positive results and this data was provided regularly to local authorities.

221. There were concerns about test underreporting in educational settings. In November 2021, it was observed that uptake and reporting of asymptomatic testing in schools and ELC settings was significantly lower than was desirable and that there had been a decline amongst both staff and pupils over the lifetime of the programme. As noted on the PHS Covid-19 Education Surveillance Report dashboard, [NR6/121 – INQ000597246] the number of reported tests is likely to be an underestimate of the total number who have taken a Lateral Flow Device (LFD) test, as some participants may opt to test but not record results. PHS further notes that anecdotal evidence suggests that negative LFD tests may be particularly underreported.
222. It was also noted, however, that it was difficult to judge to what extent these figures represented the true scale of testing in schools/settings. The figures were based only on tests reported via the UKG online reporting portal/119 number, with percentage figures arrived at via baseline numbers for staff and secondary pupils provided at the outset of the programme. User feedback (from surveys and regular local authority engagement) indicated there was undoubtedly underreporting of negative/void test results. Local authority leads reported that some schools had been surprised when provided with their specific testing data, as they had believed that the majority of their staff and pupils were testing regularly.
223. This indicated that the figures at that time were a significant underestimate of the true numbers testing. Along with local authority partners and schools, the Scottish Government undertook a range of actions to try and increase testing and reporting throughout the lifetime of the schools/ELC programme. These included:

- The Cabinet Secretary for Education and Skills wrote jointly with Councillor Stephen McCabe, as co-chairs of the Covid-19 Education Recovery Group, to all local authorities, asking that particular attention be paid to supporting testing uptake and reporting [NR6/122 - INQ000571218].
- A wide range of guidance documentation was updated in response to feedback, including: instructional materials, staff and parent letter templates with FAQ annexes to reduce administrative burdens; support for creation of digital consent forms; quick-look fact sheets, etc
- A best practice guide, based on discussions with local authorities who are doing better in terms of uptake and reporting, was circulated to all local authorities and is available to schools.

224. Analysts who supported the Advanced Learning and Science Directorate suspected that there may have been under-reporting in FE and HE settings, however they did not hold any evidence of this.

#### Impact

225. Ongoing feedback on the operation of the testing programme was also sought through various stakeholder channels, including the Schools Asymptomatic Testing Programme Board, engagement organised by YoungScot and parent forums.

226. As an example of action taken in response to this feedback, in order to address low uptake and/or underreporting, advice was provided to Ministers in December 2021 [NR6/123 – INQ000571152] proposing the removal of certain bureaucratic requirements around the testing programme, specifically in respect of maintaining test kit logs and obtaining explicit written consent from pupils to participate in the programme. These requirements were subsequently removed in an effort to reduce barriers to testing.

227. More detail on the main fora for feedback about the testing

programmes in FE and HE is outlined in Section C.

228. In addition, feedback was provided through weekly Covid Leads meeting held respectively between representatives of the further and higher education sectors and officials within the Advanced Learning and Science Directorate.

229. Throughout the pandemic, the directorates carried out a number of impact assessments which have been provided to the Inquiry. This includes the following which have specific consideration to testing decisions:

- 30 July 2020: [NR6/124 – INQ000182764] Impact Assessment: The closure and reopening of schools as part of the COVID-19 recovery process in Scotland: This assessment noted the mitigations set out in the Return to School guidance which set out a local authorities and schools were asked to implement, including. These include risk assessments, enhanced cleaning regimes, good hand and respiratory hygiene, ventilation, use of PPE where appropriate, continuous vigilance for symptoms, and surveillance, testing and outbreak management.
- 25 August 2020: [NR6/125 - INQ000189479] Impact Assessment: The closure and reopening of schools as part of the COVID-19 recovery process in Scotland Version 2.0 August 2020 updated version.
- September 2020: [NR6/126 - INQ000571135] Assessing the impact of re-opening childcare as part of the COVID-19 recovery process in Scotland: This assessed any potential impacts of a lack of testing in respect of families with children with additional support needs.
- February 2021: [NR6/127 - INQ000571136] Provision of Early Learning and Childcare During the COVID-19 Pandemic Business and Regulatory Impact Assessment (BRIA) examined aspects of enhanced measures for level 4 and noted that: "Settings should be prepared to engage with enhanced testing responses to COVID-19 outbreaks,

where recommended by the Incident Management Team. This may include more testing of people who do not have symptoms to support outbreak management, and address areas where we are concerned about transmission. This includes undertaking more testing of close contacts of confirmed cases when recommended by our local health protection teams and more intensive use of other asymptomatic testing.”

- 6 April 2022: [NR6/128 – INQ000256744] Child Rights and Wellbeing Impact Assessment (CRWIA) for Routine Protective Measures in Schools, Early Learning and Childcare (ELC) settings and daycare of children’s services and EQIA, Fairer Scotland Duty Assessment (FSDA) and Island Communities Impact Assessment (ICIA) noted findings that:
  - Asymptomatic testing for children and young people in secondary schools and for school and ELC staff should be in line with the wider Test and Protect Transition Plan.
  - Aligning to wider societal and workplace routine protective measures will have a positive impact on children’s rights where it relates to self-isolation, physical distancing, face coverings, contact tracing and asymptomatic testing.
  - The overall judgement of public health advisers and senior clinicians is that any benefits of retaining regular asymptomatic testing in secondary schools would not outweigh the disadvantages at this stage in the pandemic. We propose to help mitigate any impacts in respect of anxiety by ensuring appropriate communications around the strong public health basis for the decision and setting out clear advice on how to minimise risks as we move into a new phase of the pandemic.
  - The Advisory Sub-Group carefully considered the potential impact of the return to routine protective measures on children and young people previously on the Highest Risk List. Specifically, regarding testing, the Advisory Sub-Group considered whether there should be a differentiated approach to asymptomatic testing for special schools. The Group agreed that there should not be a blanket approach to testing for those settings, as it would single out the sector

- The ending of the regular asymptomatic testing programme in schools and in wider society may cause anxiety for some children and young people who have to date been testing regularly. However, our judgement, based on expert public health advice, is that it would not be proportionate to retain asymptomatic testing in schools only to manage any such anxiety. As noted above, we propose to help mitigate any such impacts by ensuring appropriate communications around the strong public health basis for the decision and setting out clear advice on how to minimise risks as we move into a new phase of the pandemic. It will still be open to local Health Protection Teams to make use of asymptomatic testing to manage outbreaks in schools and other settings if, in their expert judgement, it is necessary.
- Mitigations: publications in Spring 2022 of a Test & Protect transition plan and a new Covid-19 Outbreak Management Plan.
- Aligning protective measures in schools and ELC settings with wider societal and workplace routine protective measures is in line with advice from Public Health Scotland on the impact of Covid-19 on children and young people. These adjustments will have a positive impact on children's rights in relation to easing self-isolation, physical distancing, face coverings, contact tracing and asymptomatic testing
- The body of evidence on the current state of the epidemic continues to point to household transmission as the primary driver, the risk of harm to children from Covid-19 infection continues to be low, and severe health outcomes for all age groups are far less likely to arise while vaccination rates are high and the current variant is less severe. After detailed consideration expert advice from the Advisory Sub-group on Education and Children's Issues, is that it would be appropriate at to move to routine protective measures in schools and ELC settings in a proportionate and responsible manner. This includes face coverings, physical distancing and asymptomatic testing, which should follow the general guidance for wider society.

230. While the Advanced Learning and Science Directorate, did not

produce any impact assessments about the implementation of the testing programme within further and higher education settings, evidence of the impacts of non-pharmaceutical interventions were considered by generally by the Coronavirus (Covid-19): Advisory Sub-Group on Universities and Colleges. The role of this group, established in May 2021 was to support Scottish Ministers and relevant Scottish Government senior officials by:

- Interpreting SAGE and Covid-19 Advisory Group outputs as well as other emerging scientific and public health evidence, in relation to university and college issues in the context of Scotland
- Providing expert advice spanning the disciplines of public health, clinical advice, behavioural sciences, economics and statistical modelling, combined with expertise in educational and other issues relevant to universities and colleges.
- Advising Scottish Government, relevant Directorates, and ASD colleagues on taking a strategic approach to identifying, accessing and using data to support the Scottish Government's understanding of managing Covid-19 risks in university and college settings
- Providing expert advice, recognising the four harms, to support and inform the development of guidance for universities and colleges, and as an aid to forward planning for both sectors.

231. As part of this, the group held a role in considering evidence about the impacts of different Non-Pharmaceutical Interventions on the student population in order to feed this into wider decision-making.

### **E: Tracing and isolation**

232. Issues surrounding contact tracing and self-isolation requirements in schools were often considered by the Advisory Sub-group on Education and Children's Issues which was established by Learning Directorate to advise on Covid-related issues. The Sub-group's advice



informed the work of the Covid-19 Education Recovery Group (CERG) and the content of the schools guidance, which included guidance on self-isolation (including contact tracing). CERG provided advice on education policy and delivery to ministers and local government leaders in the context of the response to the Covid-19 pandemic. CERG Minutes and Papers have already been provided to the Inquiry under Module 7 General Disclosure.

233. Generally, the schools guidance would mirror the wider Scottish Government self-isolation and contact tracing policy. Guidance was broadly consistent with that of other Devolved Nations. There was regular informal contact between Scottish Government officials and colleagues in England, Wales and Northern Ireland, which included discussions about the content of guidance. The sub-group and CERG considered how this policy could and should be applied in schools, in relation to both staff and pupils and whether any specific advice or additional guidance would support the implementation of the policy in schools.

234. The following timeline details the updates to guidance for schools on contact tracing:

<b>Date</b>	<b>Update</b>
11 September 2020	Guidance on self-isolation and testing procedures clarified
17 December 2020	Guidance updated to include a strengthened approach to self-isolation
20 December 2020	Guidance updated to clarify that not all adults are considered high risk contacts
5 January 2021	Update to self-isolation sections to reflect amended approach from 6 Jan, in light of latest evidence and booster programme
7 January 2021	Self-isolation sections to align with wording in updated NHS guidance

### Specific Considerations on Contact Tracing

235. The Advisory Sub-group considered at its meeting on 29 June 2021 a paper prepared by Public Health Scotland [NR6/129 -INQ000475193] to support consideration of the extent to which the requirement for children and young people to self-isolate could be reduced in the future. The paper proposed several options including adopting a narrow definition of contact, contact testing in lieu of isolation and cluster investigation.

236. Following consideration and discussion of the Public Health Scotland advice a further paper was presented to both the Sub-group and CERG seeking views on the deliverability, risk reduction and harm three (societal harm) effects of potential alternative interventions to large scale isolation, [NR6/130 – INQ000597247], [NR6/131 – INQ000597248] and [NR6/132 – INQ000597249]. Members were also asked to give their views on potential risk mitigations. Feedback from group members covered a number of areas including mitigations in schools post-summer; self-isolation; and testing. A note of member comments are captured in the minute of the meeting on 29 June 2021, provided [NR6/133 – INQ000597250].

237. The Sub-group also gave advice to CERG on 9 August 2021 to support the development of schools guidance and noted that the recommended approach:

- Would ensure that children and young people were treated in line with wider society given the change to release fully vaccinated adults from isolation, ensuring parity and protecting the rights of children and young people;
- Reflected agreement on public health advice that the evidence base suggested that children and young people are less likely to transmit than adults and that cohort, and education staff, are therefore at a reduced risk of

- infection compared to adult to adult transmission risk; and
- Was anticipated to increase the number of cases in school settings and in children and young people in community settings.

238. Following changes to the wider self-isolation policy the sub-group was asked to provide its view on potential options to refine some aspects of the current approach in order to reduce some negative impacts. The sub-group agreed that changes to the definition of a high risk close contact, who would be required to self-isolate and take a PCR test, would not be proportionate given that the majority of adults and at risk groups now have protection from vaccination. Additionally, the levels of contact tracing required by schools would result in an unnecessary increase in workload for school staff.

239. It was also agreed that it would be helpful to review the current guidance around “warn and inform” letters to encourage schools to take a more targeted approach. Sub-group members also advised that it would be helpful to revise the “warn and inform” template letters to strongly encourage recipients to take an LFD test prior to returning to the school environment. This action was taken in due course.

240. The Learning Directorate does not hold any specific feedback from individual schools at that time on the revised approach to warn and inform letters. The CERG minutes from 9 September [NR6/134 – INQ000597251] state:

*“The Advisory Sub-Group meeting had recommended that the level of cases was too high at the moment to consider any easing of mitigations at this point of time. The group would review the evidence again at their next meeting. The group also concluded that the updated self-isolation approach remained appropriate and proportionate, but recognised there may be scope to provide some refinement. In particular, it recommended that there should be a more targeted approach for the Warn and Inform letters to ensure that they*

*were treated with suitable importance while also reducing anxiety. It also recommended a strengthening of the recommendation to encourage pupils to take a Lateral Flow Test before returning to school.”*

241. The Sub-Group’s recommendations were welcomed and supported by CERG members. It was noted that schools were feeling the pressure in terms of the number of staff being off at the time and that it was challenging to deliver the timetable in some cases.

242. In general, advice on isolation of students and staff working or learning in schools and early learning settings was covered in the various iterations of the Reducing Risks in Schools guidance [NR6/135 - INQ000182870], the main source of guidance on managing Covid in schools. This included, for example, the issuing of “warn and inform” letters when there were positive cases at points during the pandemic. An example text of this guidance from April 2022 is included below.

“Children, young people and staff must stay at home and self-isolate if they:

- have symptoms of Covid-19, whether they feel unwell or not
- have tested positive, even if asymptomatic
- are required to self-isolate for any other reason in line with the requirements set out on NHS Inform
- are identified as a close contact and are over 18 years and 4 months and not fully vaccinated

243. Public health advice on testing, self-isolation and managing confirmed cases of Covid-19 should be followed as per the relevant Scottish Government guidance and Test and Protect | NHS inform.

244. From 18th April 2022, there was no longer a requirement for schools to issue individual information (“warn and inform”) letters to low risk contacts when positive cases are identified, or for them to test prior to

returning to the school environment provided they remain without symptoms.”

245. The Learning Directorate worked closely with Public Health Scotland colleagues in order to ensure that school safety guidance, including guidance on contact tracing, was appropriately aligned with public health guidance. School safety guidance was informed by, and regularly updated to reflect, the most up-to-date public health understanding of the risks of transmission in a school environment. The guidance generally made clear the importance of schools maintaining a close relationship with local health protection teams and involving them in outbreak management.

246. In December 2020, use of the Protect Scotland app was extended from users aged 16+ to include ‘post-primary education-aged users’. A specific campaign targeted at this younger age group was put in place by the Scottish Government to encourage take up, making use of television, digital, social media and PR channels, as well as working with Young Scot. Posters were made available to Education Scotland to distribute to schools. Guidance on use of the app was made available via the protect.scot website, and school safety guidance referenced the app as one of a suite of measures that schools should have regard to in order to mitigate risks.

247. Education and Justice Directorates did not undertake specific ongoing monitoring or assessment of the Protect Scotland app, although when issues emerged with the use of the app in schools in the early stages of its deployment, these were passed to Learning Directorate or Education Scotland colleagues who liaised with health colleagues to understand the issues and provide improved guidance.

248. Learning Directorate regularly worked with partners to encourage compliance with school safety guidance, which included use of the Protect Scotland app once extended to younger users. The Reducing

Risks in Schools guidance was developed in consultation with stakeholders to ensure that it both reflected wider societal Covid guidance and that it was reasonable and practical for schools to implement. The Scottish Government did not collect data on compliance with the guidance, but no significant concerns about it were raised at the time. The Scottish Government did carry out research as part of monitoring and evaluation of the testing programme in schools, report provided [NR6/121 – INQ000597246].

249. For example, in September 2021, the Cabinet Secretary for Education and Skills and Councillor McCabe, as co-chairs of the Covid-19 Education Recovery Group, wrote to all local authority [NR6/136 - INQ000321845] chief executives and directors of education, asking them to maintain a very strong focus on ensuring that the guidance on reducing risks in schools and ELC settings, including on contact tracing, continued to be implemented fully and effectively. School safety guidance routinely referenced the Protect Scotland app as one of a suite of measures that schools should have regard to in order to mitigate risks. Chief executives and directors of education, asking them to maintain a very strong focus on ensuring that the guidance on reducing risks in schools and ELC settings, including on contact tracing, continued to be implemented fully and effectively. School safety guidance routinely referenced the Protect Scotland app as one of a suite of measures that schools should have regard to in order to mitigate risks.

250. In the early stages of the use of the Protect Scotland app in schools, reports emerged of some issues with effective usage. For example, local health protection teams in Aberdeen were reported to have asked staff to switch off the Protect Scotland app while in school, as it was repeatedly contacting teachers and asking them to self-isolate. Advice provided to Ministers indicated that the rationale for this from

the local public health team was that due to the schools in the area

using clinical grade PPE, the app should be disabled or off. Following liaison between Learning Directorate, Education Scotland and health colleagues, a National Incident Management Team position on the correct use of the app in schools was established and relevant guidance updated.

251. Privacy notice information was considered, developed and shared in relation to the schools/childcare Asymptomatic Covid-19 Testing Programme, and we are not aware of any major concerns being raised by any representatives from any education settings. Examples of relevant resources circulated to schools and the childcare sector include:

- Infographics [NR6/137 – INQ000571175].
- Fact sheets disseminated as part of the Asymptomatic Testing Programme [NR6/138 – INQ000571176].
- A guidance note circulated to schools and ELC sectors on elements relating to the undertaking of Data Protection Impact Assessments [NR6/139 – INQ000571177].
- Privacy notices and elements to consider relevant to Covid-19 testing of staff in primary schools [NR6/140 – INQ000475192].

252. In terms of the evidence on the levels of compliance with isolation requirements by students and staff in HE and FE settings over the relevant period, the ONS carried out a survey of students [NR6/141 – INQ000571151].

253. This ONS Insight Survey did not cover Scotland, but Advanced Learning and Science Directorate officials used these as a proxy to help understand student wellbeing, testing and vaccination rates in Scotland. The information distilled did not specifically focus on non-compliance with isolation requirements. The reason why this survey was not carried out for Scotland was that the sampling methodology used by ONS was not believed to be suitable for Scotland due to the



smaller population size. There was also the potential for respondent confusion with different restrictions in place north and south of the border.

## **F: Enforcement**

254. The Deputy First Minister John Swinney requested the development of a framework to support rational decision making on the use of Non-Pharmaceutical Interventions (NPIs). An approach was developed that involved assessment of different NPI options against the four harms to inform decision making, alongside wider considerations. The essence of this approach was communicated publicly in the Framework for Decision Making publication. This was updated over time and is provided: [NR6/005 - INQ000369689] along with the supporting evidence paper published in May 2020 [NR6/142 - INQ000131027]. An additional accompanying supporting evidence document which details how the four harms approach was to be implemented is also provided: [NR6/143 - INQ000302505].

255. In general, there were frequent discussions between the governments of the four nations on their respective NPI responses and governments were, of course, also able to review each other's publications setting out the details of those responses. Consequently, a degree of commonality across the approaches of the four nations (and beyond) is to be expected.

256. The Technical Report on the Covid-19 Pandemic in the UK (December 2022), provided: [NR6/144 - INQ000203933], lists four types of harm but these are all health focused and it is not evident that a four harms approach per se was explicitly central to the UK Government's decision making in the same way as it was purposefully used within the Scottish Government. Scottish Ministers developed the four harms approach to guide pandemic response decision-

making for Scotland, particularly in relation to NPIs, because they judged that this was the appropriate way to manage the response and to seek to minimise the various harms of the pandemic.

Internationally, the World Health Organisation (WHO) advocated an approach to NPIs that took account of the various types of harm. See for example: Calibrating long-term non-pharmaceutical interventions for Covid-19 (May 2020), provided [NR6/145 - INQ000302506].

### Enforcement legislation

257. The Scottish Government Police Division did not lead on the drafting of any legislation. Its role involved facilitating knowledge transfer between Police Scotland and the Scottish Government, ensuring that changes to police powers were understood, justified, enforceable and proportionate. This included informing the development of equalities impact assessments.

258. However, Police Division was embedded into the process to develop and amend statutory Covid restrictions and regularly fed into the development of coronavirus legislation in relation to police powers and enforcement, including the assessment of risk and harm through the four harms approach. The four harms approach underpinned the Scottish Government's assessment of risk and harm, our development of options and restrictions and our ability to make decisions based on a broad appreciation of the consequences of our actions.

259. The four harms encapsulated the multi-faceted harms of the crisis, namely the direct harm of the disease itself, the wider health harm and the broader societal and economic impacts of both the virus itself and our necessary responses to it. The Scottish Government's approach was to suppress the virus to a very low level (the first harm) while seeking to minimise these broader harms. The Police Division predominantly contributed to the assessment process around the first

harm by ensuring the police had the necessary powers to enforce coronavirus regulations, in line with the 4Es approach, which were developed and implemented with the aim of suppressing the virus.

260. As the Chief Constable has operational independence, no guidance on enforcement was produced by the Scottish Government. Police Scotland developed their own guidance and Standard Operating Procedures (SOPs) on enforcement for officers and this included detailed information on penalties and escalation through Fixed Penalty Notice (FPN) levels for subsequent offences. Police Scotland used the powers afforded to them under the relevant legislation, as well as the broader Scottish Government guidance produced by Health and Social Care where appropriate.

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

262. However, notwithstanding this, from March 2020 to May 2021 only 6% of the total police activity involved the use of fixed penalty notices and in the majority of cases (94%), education and explanation by Police Scotland was sufficient to achieve compliance. A data report on trends in enforcement is provided [NR6/146– INQ000597252]. This could suggest that reliance on the 4 Es was a more effective method of policing, with reliance on more punitive measures like FPNs a last resort.

263. In terms of overall approach to dealing with marches, parades, gatherings and protests, the Covid-19 Marches, Parades and Static Demonstrations Stakeholder Engagement Group was established by the Scottish Government as an oversight group to bring together colleagues from local government, Police Scotland, independent

experts and officials from areas across the Scottish Government with an interest in marches, parades and protests. The group met every three weeks from 7 December 2020 to 9 August 2021 to inform the regular review of the restrictions in place at the time, consider whether the restrictions needed to be altered in response to the changing circumstances, and to inform the Covid-19 guidance produced by the Scottish Government on the restrictions to marches, parades and static demonstrations.

264. Marches and parades had been suspended at the same time as all other public events and activity ceased at commencement of 'lockdown' on 24 March 2020. Initially it was not clear how long the pandemic would last and march organisers voluntarily stopped their events. This was also in line with legislation enforcing social distancing measures and 'stay at home' regulations. It then became clear that COVID restrictions would be in place for some time and that the easing of these restrictions would be slow. March organisers were keen to return to their annual events and in November 2020, Scotland introduced regional protection levels, opening up the possibility of the resumption of public events and gatherings dependent on protection level in place. The group was formed to consider all issues relating to marches and parades and the process for allowing these activities to resume.

#### Intelligence gathering

265. Regular meetings took place with Police Scotland's Operation Talla team which enabled officials to share Scottish Government policy considerations with Police Scotland, which would then be fed into the Covid Coordination Directorate and the relevant policy teams to help inform policy development and to advise Ministers.

266. This intelligence gathering also focused on patterns and trends of breaches for particular offences which helped to inform approaches to

enforcement and compliance. The introduction of additional powers for the police were considered by Scottish Government on a four harms basis.

267. Between March 2020 and May 2021, Police Scotland issued 20,410 FPNs for various COVID-19 regulation breaches. However, these figures encompass all types of violations, not exclusively those related to testing, tracing, or isolation [NR6/146 – INQ000597252]. Police Scotland published weekly bulletins detailing enforcement actions during the pandemic. These reports provide cumulative totals of enforcement measures but do not disaggregate data specifically for test, trace, or isolate offenses. An example is provided [NR6/147 – INQ000597253].

268. As well as providing an avenue that allowed Police Scotland's views to be a factor in decision making around regulation change, the relationship was also beneficial to Police Scotland and other justice partners as it allowed them to develop the required charge codes and guidance and operating procedures for officers and staff to be able to apply the regulations on the ground, including enforcement on TTI related offences.

269. During the Covid-19 pandemic, Justice Analytical Services (JAS) collected data from partner organisations to support policy decisions, inform Ministers and to make data publicly available in the form of regular statistical reports.

These data sources were as follows:

- Data from Police Scotland (Operation Talla) was collected weekly on the number of Covid-19 related interventions (Police dispersals, Fixed Penalty Notices (FPNs) and arrests across local authorities). JAS used this to update relevant sections of the SGoRR situation reports.
- Information on policing demands, such as call, incident and crime volumes and Covid-19 enforcement, was used to publish information in the Justice

Analytical Services Coronavirus (Covid-19) Data report. These reports were published on a monthly basis on the Scottish Government website from June 2020 to March 2022.

- Domestic abuse incidents were recorded using the police data and also sourced from the above Operation Talla reports. They were uploaded to the Cabinet Office Dashboard on a weekly basis.
- For police recorded crime data, Police Scotland analysts provided data on the number of crimes and offences recorded on a monthly basis. This data was both published as Official Statistics and as part of the monthly Justice Analytical Services Coronavirus (Covid-19) Data report, as well on the Covid-19 Public Facing Dashboard (also hosted on the Scottish Government website).
- Staff absences due to Covid-19 (including those with symptoms and self-isolating) were provided by justice partners (Police Scotland, the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Prison Service (SPS), the Scottish Fire and Rescue Service (SFRS), Police Investigations and Review Commissioner (PIRC) and collected daily (then weekly).

270. Additionally, JAS reviewed publicly available sources from comparison countries to review international policing approaches and responses to policing during lockdown and during the easing of lockdown. Broadly speaking, most countries afforded enforcement powers to the police to ensure compliance with Covid rules, however, what was permissible under lockdown varied from country to country. In most countries, individuals were encouraged to comply with restrictions prior to any enforcement action, such as fines or arrests. The penalties imposed also varied significantly across countries and in some examples (Germany, France and the USA) there were clashes between public and police because of the restrictions.

271. The evidence gathered was part of a package of evidence used to inform ministerial decision making and colleagues from JAS presented the papers at the Independent Advisory Group (IAG) which

was set up to review and consider the Police use of temporary powers during the pandemic.

272. Regular analysis of enforcement data, including Fixed Penalty Notices (FPNs), allowed Police Scotland to identify trends and modify approaches. For instance, recognising that 94% of interactions were resolved through education and explanation led to a continued emphasis on non-punitive measures.

#### Differences in approach across the UK

273. As health and justice are devolved matters, coronavirus regulations were often different in Scotland to the rest of the UK and, as a result, required different police powers and a different policing approach. The transfer of powers to devolved institutions means that there will be legitimate differences of policy approach, legislation and funding decisions due to different governance and legal systems in place and, in this instance, differing coronavirus regulations and restrictions.

274. Therefore, while the Scottish Government and other devolved nations engaged in discussions with the UKG, they took a different approach, recognising that each of the four nations needed to progress at a pace which was appropriate to their individual needs.

275. There was on-going dialogue between Scottish Government officials, the Ministry of Justice (MoJ), the Home Office and the devolved administrations throughout the pandemic on a number of issues including enforcement.

276. For all Covid related offences, enforcement (including for any TTI related offences) was an operational matter for Police Scotland. Enforcement predominantly relied on the 4 Es, with more punitive action taken as a last resort. This was the approach adopted across England and Wales, although FPN levels varied.

277. Officials also participated in regular meetings with the Ministry of Justice (MoJ), the Home Office and the devolved administrations to discuss approaches across the UK. These discussions discussed enforcement of respective regulations and differing approaches.
278. Police Scotland, through its regular engagement with the Scottish Government, highlighted practical issues which it considered were influencing compliance throughout the pandemic.
279. One of the key factors identified was the pace and frequency of updates to regulations and guidance. While updates were made in line with ongoing assessments of risk and harm through the four harms approach, Police Scotland fed back that the speed and frequency of changes could result in public confusion about changes to the regulations and guidance.
280. Additionally, due to the difference in regulations and guidance, including in respect of TTI offences between Scotland and the rest of the UK (rUK), Police Scotland also reported issues where visitors from rUK were unaware of the different restrictions in Scotland and, as a result, weren't following the restrictions and guidance in place in Scotland.
281. These issues did not have a significant impact on enforcement and were for the most part resolved through the 4Es approach. Officials fed these issues/concerns into the Covid Coordination Directorate (then named the Outbreak Management Directorate) and the Scottish Government communications team who were responsible for Covid messaging within Scottish Government.
282. The decision to depart from the approach of other UK jurisdictions hinged on the understanding from engagement with Police Scotland, and COPFS, that increasing the level of fines would not correlate with



compliance and would instead undermine the policing by consent and 4 Es approach that had been adopted throughout the pandemic.

### Consideration of International Approaches

283. In shaping its Covid-19 enforcement policies, the Scottish Government took into account various factors, including the effectiveness and proportionality of enforcement measures, public health objectives, and the human rights implications. The approach was also influenced by the strategies and experiences of other UK jurisdictions, as well as international practices:

284. In England and Wales, the Home Office initially imposed higher fines for certain breaches of Covid-19 rules, such as gatherings exceeding the permitted number of people. For example, fines were set at £200 for the first offence, which doubled with each subsequent offence. However, these higher fines faced criticism for being disproportionately punitive, especially for those from lower-income backgrounds or marginalised groups. The fines were revised and, at times, reduced to reflect the enforcement balance.

285. The Scottish Government also looked at international responses, particularly those from countries like New Zealand and Germany, where enforcement measures included higher fines but with specific consideration of vulnerable populations. Many countries, including those in Europe, adjusted fines and penalties based on public health guidance and societal considerations, aiming to ensure that enforcement did not have disproportionate impacts on certain groups

### Scottish Government approach

286. The Scottish Government focused on proportionality in its approach to issuing FPNs, acknowledging that enforcement needed to be balanced with public engagement. It adopted a flexible approach,

allowing enforcement officers to exercise discretion when issuing fines, with a focus on education and encouragement over punitive measures.

287. Police Scotland operate independently from the Scottish Government. The Scottish Government chose not to raise the level of fines based on concerns about discriminatory impacts on disadvantaged groups, but the actual decision as to whether or not to issue the FPN was for officers, and was presumably exercised on a case by case basis.

288. The Scottish Government's approach was to make Fixed Penalty Notices (FPNs) a last resort, emphasising that police should initially engage with individuals, explain the rules, and encourage compliance. Higher fines were not introduced in Scotland, partly because of concerns about discriminatory impacts on disadvantaged groups, particularly during times of economic hardship and mental health challenges.

289. The Scottish Human Rights Commission (SHRC) and other advocacy bodies also contributed, highlighting the importance of protecting human rights, such as the right to access services, the right to family life, and the right to work, when considering enforcement measures. The Independent Advisory Group on Police Powers oversaw the application of police powers during the pandemic, including the interrogation of any human rights impacts.

#### Enforcement data

290. During the Covid-19 pandemic, Justice Analytical Services (JAS) collected data from partner organisations to support policy decisions, inform Ministers and to make data publicly available in the form of regular statistical reports.

291. The evidence gathered was part of a package of evidence used to inform ministerial decision making and colleagues from JAS presented the papers at the IAG on Police Use of Temporary Powers Relating to the Coronavirus Crisis. In their final report the IAG concluded that Police Scotland has used their powers proportionately and in line with human rights throughout the pandemic.
292. Police Scotland compiled a data set of all Fixed Penalty Notices (FPNs) issued in order to support the work of the IAG.
293. Between March 2020 and May 2021, Police Scotland data show that 20,410 FPNs were issued under the Regulations (data not disaggregated based on the offence for which it was issued). The police also recorded just under 150,000 Covid related interventions. The majority (84.6%) of interventions involved use of dispersal powers, with members of the public either being 'informed' of the public health risks by police officers (64.4%) or being 'instructed' to comply with the rules (20.2%). A further 3.2% of interventions involved the "removal" of a person from a place or premises (e.g. being escorted from a location or taken home)
294. Only one in eight (12.3%) interventions recorded involved use of the fourth E (i.e., enforcement). Use of an FPN represented 11.6% of all recorded interventions, while less than 1% involved use of arrest. Data on withdrawn FPNs is not held by the Scottish Government. Data relating to whether FPNs were correctly issued, or on whether any FPNs which were contested through the court process was not collected or analysed.
295. As the Chief Constable has operational independence, no guidance on enforcement was produced by the Scottish Government. Police Scotland developed their own guidance and Standard Operating Procedures (SOPs) on enforcement for officers and this included detailed information on penalties and escalation through FPN levels

for subsequent offences. Stakeholders, including Police Scotland used the powers afforded to them under the relevant legislation, as well as the broader Scottish Government guidance produced by Health and Social Care where appropriate.

296. In terms of operational matters, the Chief Constable is accountable to the SPA, rather than Scottish Ministers.

297. Justice Analytical Services (JAS) collected data from partner organisations to support policy decisions, inform Ministers and to make data publicly available in the form of regular statistical reports. This included information on policing demands, such as call, incident and crime volumes and Covid-19 enforcement; and data on the number of crimes and offences recorded on a monthly basis.

298. The evidence gathered was part of a package of evidence used to inform ministerial decision making and colleagues from JAS presented the papers at the Independent Advisory Group (IAG) on Police Use of Temporary Powers Relating to the Coronavirus Crisis.

299. Justice Analytical Services (JAS) collected data from partner organisations to support policy decisions, inform Ministers and to make data publicly available in the form of regular statistical reports. This included information on policing demands, such as call, incident and crime volumes and Covid-19 enforcement; and data on the number of crimes and offences recorded on a monthly basis.

300. The demographic profile of those who were issued with FPNs under the Regulations between March 2020 and May 2021 is not representative of the Scottish population. Just under three quarters (72.4%) of all FPNs were issued to people aged 30 or under, compared to 18.9% of the population, with recipients having a median age of 23 years. In addition, around two thirds of all FPNs were

issued to men (67.4%), who make up 48.7% of the population.

301. The majority (92.3%) of FPNs were issued to people from white (including white minorities) ethnic groups. The remaining 7.7% of FPNs were issued to people from an ethnic minority group (excluding white minorities), although in the context of Scotland's total population, this only 0.01% of all adults.

302. Analysis of the Scottish FPN data, covering the period from 27th March to 31st May 2020, found that 82.0% of all FPNs were issued to individuals who were already known to Police Scotland's Criminal History System (CHS).

303. Data published by the Scottish Police Authority (SPA) in their analysis of Fixed Penalty Notices (FPNs) issued during the Covid-19 pandemic indicates how many people were issued more than one FPN in Scotland. According to the SPA report:

- Just over 10% of FPN recipients in Scotland were fined more than once during the pandemic.
- The report analysed characteristics of repeat offenders, comparing them with individuals who received only a single FPN.
- Repeat offenders were observed to have different demographic and historical criminal record profiles than those fined only once. Those who were younger, living in more deprived areas and with prior criminal history had a higher likelihood of being issued more than one FPN.

304. The available data on Fixed Penalty Notices (FPNs) issued in Scotland during the Covid-19 pandemic does not provide detailed information on recipients possessing multiple protected characteristics. While reports have analysed certain demographics, such as age and prior criminal history, there is no comprehensive analysis combining multiple protected characteristics for FPN recipients.

305. During the COVID-19 pandemic, research on FPNs in Scotland primarily analysed individual demographic factors—such as age, prior criminal history, and area deprivation—due to the limitations of the available data. The data was designed to monitor enforcement of public health regulations. While this provided valuable insights into specific characteristics of FPN recipients, it did not facilitate comprehensive analysis of multiple intersecting characteristics simultaneously. Consequently, studies focused on examining each demographic factor independently to understand its correlation with FPN issuance. For instance, analyses revealed that younger individuals and those from more deprived areas were more likely to receive FPNs, and that a significant proportion of recipients had prior criminal histories.

306. However, the absence of integrated data on combined characteristics limited the ability to explore how multiple factors interacted to influence enforcement patterns.

307. As part of their role, the IAG considered a report from the Scottish Human Rights Commission (SHRC) on relevant human rights considerations in the policing of the pandemic; including, the impact of protests and the Black Lives Matter movement.

308. However, Police Scotland balanced carefully the imposition and enforcement of Covid restrictions against human rights considerations and the right to peaceful protest. The priority for Police Scotland during these events was public safety, including reducing the risk of disorder, road safety and effective crowd management among the complexities of a vociferous crowd. This included established crowd control measures to prevent serious disorder in multiple areas and to protect the public. Where it was appropriate to do so officers moved to enforcement for a variety of offences including breaches of coronavirus regulations.

309. In commenting on the policing of the protests in Kenmure Street, Glasgow against the removal of asylum seekers, and Rangers FC title celebrations in May 2021, the IAG said that Police Scotland's approach to both events "was informed by, and consistent with, relevant human rights principles and considerations, in particular, lawfulness, necessity and proportionality".

#### Equality and human rights considerations

310. Human rights considerations were embedded throughout the pandemic response. Operation Talla, led by Police Scotland maintained oversight of community impact, including equality and human rights considerations.

311. The IAG's terms of reference include specific reference to the need "To assess and comment on Police Scotland's process for managing and updating their Community Impact Assessment, Equality and Human Rights Impact Assessment and Child Rights and Wellbeing Impact Assessment in the context of the Coronavirus Crisis".

312. Both the Scottish Human Rights Commission (SHRC) and the Children and Young People's Commissioner Scotland (CYPCS) published reports addressing the human rights implications of Covid-19 enforcement measures, including those related to Test, Trace, and Isolate (TTI).

313. The Scottish Human Rights Commission (SHRC) published the Covid-19, Social Care and Human Rights Monitoring Report, which examines the impact of the pandemic on social care and human rights, highlighting concerns about the adequacy of social care models and the transparency of legislative changes.

314. The SHRC also provided various briefings and statements on the

human rights implications of Covid-19, including the impact on care homes and the need for a human rights-based approach to the pandemic response.

315. The Children and Young People's Commissioner Scotland (CYPCS) published an impact assessment (Independent Children's Rights Impact Assessment on the Response to Covid-19), evaluating the impact of the pandemic response on children's rights, emphasising the necessity of a child-rights approach in policy decisions.

316. The CYPCS also provided written evidence discussing the pandemic's impact on children, highlighting the need for measures that consider children's rights and well-being.

317. As previously described, an Independent Advisory Group (IAG) was established to review Police Scotland's use of their temporary powers. To ensure equalities issues were incorporated and considered, the Group sought to involve the voices of community and grassroots representatives, advocates and activists, including those which deal with issues of equality, race, and human rights.

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

319. The IAG prioritised proportionality in enforcement, emphasising the 4 E's approach. Its findings did not support increasing FPN issuance for compliance, reinforcing that enforcement should remain a last resort.



## **G: Equalities**

### **Equalities considerations**

320. Equalities issues were considered in relation to residential respite care. As part of the work of the Advisory Sub-group on Education and Children's Issues, the Group considered support for children in residential respite care and the risks associated with their re-opening.

321. In relation to pupils with Additional Support Needs (ASN), in September 2021, the Group found that there was no statistical evidence of increased transmission in ASN settings compared to mainstream settings in Scotland. However, this analysis did not include staff. As a result, the sub-group suggested that it could be plausible that close working in these settings could result in an increased transmission risk for staff. The sub-group raised an action for Public Health Scotland and ASN policy colleagues to work further with sector representatives to address the issues raised and improve the advice offered in existing guidance as necessary. Separately, a number of impact assessments were carried out to help inform decision making in relation to Non Pharmaceutical Interventions (NPIs) and their impact on at risk or vulnerable groups. A sample of these impact assessments has been provided. In addition, officials contributed towards the Impact Assessment that was published by the Department of Health and Social Care alongside the UK Coronavirus Act 2020.

322. A sample of Equality Impact Assessments, Children's Rights and Wellbeing Impact Assessments and Business and Regulatory Impact Assessments are provided [NR6/148 - INQ000182758], [NR6/149 - INQ000182887] [NR6/150 - INQ000182740], [NR6/151

- INQ000182746], [NR6/152 - INQ000182886], [NR6/125 - INQ000189479], [NR6/153 - INQ000182889], [NR6/124 - INQ000182764], [NR6/154 - INQ000182890], [NR6/155 - INQ000182891], [NR6/156 - INQ000182892], [NR6/157 - INQ000182894], [NR6/158 - INQ000182895] and [NR6/159 - INQ000182893].

323. The Reducing Risks in Schools guidance contained advice in relation to considerations for specific groups. For example, those who were on the shielding list, as well as differing advice for different groups of pupils and staff, such as those in primary schools, and were focused on ensuring safety and wellbeing for all as a preventative approach. Guidance on testing was included within the reducing the risks in schools guidance. This included in October 2021 that alternative approaches to testing had been established due to discomfort in throat swabbing, following engagement with young people.

324. The approach to TTI is set out in more detail in Section D, which explains the introduction of TTI for senior pupils and then access to testing for others. This included pupils at the Grant-Aided Special Schools.

325. However, Public Health Scotland provided advice in support of the TTI programme which included advice for those who could not test, including due to disabilities or neurodivergence.

326. Guidance was also included in the reducing risks in schools guidance from Jan 2022, this specifically focused on those who were unable to test for medical reasons, such as a disability of neurodivergence.

327. Throughout the duration of the work of the Coronavirus (Covid-19): Advisory Sub-Group on Universities and Colleges, the negative

impact which Covid had on disadvantaged groups was considered by members, encompassing all aspects of Covid, including testing.

328. This can be evidenced in the notes of the meetings that were published on the Scottish Government website, provided under General Disclosure with regards to the paper on the “Wider Harms”, provided [NR6/160 – INQ000545893]
329. Guidance issued to the further and higher education sectors by the Advanced Learning and Science Directorate during this period always set out the need to consider the circumstances of vulnerable students, but decisions about how to put support in place was for individual institutions to decide upon.
330. Travel Guidance was issued to students in March 2020, informed by the wider travel restrictions in place under the 2020 Regulations, for example, around arrangements to collect belongings. Travel guidance was published on the SAAS web site. The guidance stated that: “People in Scotland should not move unless reasonably necessary. You should therefore not move accommodation and return home unless the move is unavoidable”, provided [NR6/161 – INQ000545912]
331. International students at the start of the pandemic in March 2020 were advised to follow the general advice as outlined below. In addition, home students over 18 due to go on an outward mobility exchange to study or work were advised to keep in contact with the organising body - their university, the British Council, Fulbright US-UK Commission - for the latest information on their programme, including cancellation, postponement and, if applicable, refund and reimbursement policies; check the latest travel advice about their destination countries via the Foreign and Commonwealth website. Those who are under 18 were advised not to travel.
332. 21 May 2020 - Ministerial letter to FE and HE institutions, outlining

planned route out of pandemic, provided, [NR6/162 – INQ000545808].

333. 29 June 2020 - Following Scottish Government's route map through and out of the crisis, separate guidance for college and universities was published setting out the need to minimise numbers of students on campus and the mitigations (physical distancing, enhanced hygiene etc) expected to be in place to minimise risk of virus transmission. Blended learning model in place with remote teaching. The guidance is provided, [NR6/161 – INQ000545912]. A submission on safer workplace guidance for colleges is also provided, [NR6/163 – INQ000545810].

334. July 2020 – Scottish Government issued guidance to student accommodation providers initially as a standalone document, provided [NR6/164 – INQ000545790]. The Guidance and its subsequent updates were shaped by the Student Accommodation Group and informed by the latest clinical information which officials presented to the Group.

335. Guidance on safe re-opening during the coronavirus pandemic for college, university and PBSA, provided on 5 August 2020 [NR6/165 – INQ000545814].

336. Guidance updated to reflect new face covering guidance, provided on 7 August 2020 [NR6/166 – INQ000545815].

337. Updated guidance for colleges and universities and student accommodation providers, provided on 19 August 2020 [NR6/167 – INQ000545816]

338. Submission and response from DFM on the proposal to strengthen testing measures to reduce the risk of Covid transmission in universities and colleges, provided on 28 August 2020 [NR6/168 –

INQ000545817].

339. On 1 September 2020, Guidance combined into a single document and updated based on the experience of student accommodation outbreaks in preceding weeks. Strongly emphasises the need to limit numbers on campus and the need for institutions and accommodation providers to ensure students comply with guidance and regulations. The draft guidance and response from the DFM are provided above.

340. Guidance published in context of multiple student accommodation outbreaks, with large numbers of students self-isolating and majority of teaching online. Sets out circumstances in which students (including those self-isolating) can return home and the safety measures required to do so, provided on 27 September 2020. [NR6/169 – INQ000545821].

341. Guidance published on SIS website about travel to/from student accommodation, provided on 28 September 2020 [NR6/170 – INQ000545822]

342. Following move to levels system of restrictions, guidance reflects how colleges and universities will operate in the different levels. Levels 0-2 are 'blended learning' and levels 3-4 are 'restricted blended', provided on 29 October 2020 [NR6/171 – INQ000545823].

343. Guidance/Q&A published for students wishing to travel home for winter break. Students encouraged to restrict social interaction for 2 weeks before leaving and to take 2 lateral flow tests before departure. Institutions putting arrangements in place to facilitate lateral flow testing. Staggered return in place (beginning 27/11), provided on 25 November 2020 [NR6/054 – INQ000256722].

344. Advisory note from the Coronavirus (Covid 19): Advisory Sub-Group on Education and Children's Issues about face coverings in college

and university, provided on 1 December 2020. [NR6/172 – INQ000545824].

345. Guidance published for students returning to campus after the winter break. Staggered return of students (beginning 4/01) in place to avoid mass travel by students (staggered over 6 weeks). Guidance strongly advises students not to return to term-time accommodation until in-person teaching resumes and asks students to voluntarily reduce their social interaction for 2 weeks before travel. Notes asymptomatic testing will be in place - details to be confirmed, provided on 9 December 2020. [NR6/055 – INQ000571164].

346. Self-isolation guidance for students was published, provided [NR6/116 – INQ000571139], along with guidance for students returning to Higher or Further Education after the winter break, provided [NR6/055 – INQ000571164], and advice for providers on the setting up campus testing facilities, provided [NR6/173 – INQ000256724]. Advice was also published by the Advisory Sub-group on Education and Children's Issues in relation to the use of face coverings in college and university, provided on 14 December 2020. [NR6/172 – INQ000545824].

347. Scottish Government announces staggered start to new term will be extended. A submission for the 7 January on the new covid variant is provided on 8 January 2021 [NR6/174 – INQ000545825].

348. Temporary lockdown published for colleges and universities, provided on 15 January 2021. [NR6/175 – INQ000545829].

349. 3 March 2021 - Updated temporary lockdown guidance published. Following FM update of 02/02, updated guidance reflects that phase 2 will only begin when it is safe to do so provided on 3 March 2021.

350. Updated temporary lockdown guidance published. Confirms phase 1 likely in place until March provided on 17 March 2021.

351. Beyond Level 0 guidance on the operation of colleges, universities and CLD providers for academic year 2021/22 is published on the Scottish Government website. This guidance was developed through the Covid Recovery Group provided on 8 July 2021. [NR6/175– INQ000545829].
352. Update to SIS website, in advance of 21-22 academic year, provided on 4 August 2021. [NR6/176 – INQ000545830].
353. Revised and streamlined guidance for colleges, universities and CLD published. Guidance streamlined to reflect anticipated move to beyond level 0 in new academic year. Institutions able to return with 'baseline measures' designed to minimise the risk of transmission, provided on 10 August 2021. [NR6/177 – INQ000545831]
354. Managed isolation in student accommodation guidance issued to institutions who were piloting the arrangements. A submission on student accommodation for the purpose of managed isolation is provided on 12 August 2021 [NR6/178 – INQ000545832].
355. Guidance for colleges and lecturers involved in supporting the delivery of National 5, Higher and Advanced Higher courses in academic year 2020 to 2021, provided on 15 September 2021. [NR6/179 – INQ000545833].
356. Risk-reduction mitigations to support universities, colleges and community learning and development providers at Level 0, provided on 15 September 2021. [NR6/180 – INQ000545834].
357. Covid-19 Advisory Sub-group on Universities and Colleges – Advice Note for Winter Preparations for the 2021/22 Academic Year, provided on 29 October 2021. [NR6/181 – INQ000545835].
358. The Minister for Further Education and Higher Education, Youth Employment and Training sent a letter to university and college principals regarding the Omicron variant and protective measures.

The Minister requested them to report on protective measures/ movement of students / vaccination programme, provided on 15 December 2021. [NR6/182 – INQ000545836].

359. Interim sector-specific guidance, provided [NR6/183 – INQ000545837]. Officials had intended to publish this guidance but deferred due to strong sector pushback. The minutes from the 19 January meeting of the Advanced Learning Recovery Group outline the sectoral concerns in greater detail, provided on 1 January 2022. [NR6/184 – INQ000545838].

360. Agreement to move away from sector specific guidance towards guiding principles, with institutional discretion about how to put into practice. A submission on guiding principles has been provided on 1 April 2022. [NR6/185 – INQ000545839].

361. No specific support was put in place by Education and Justice Directorates in relation to Test & Protect, however, a range of other support, including financial support, was available. The support provided to students over the course of the pandemic has been substantial with over £96 million having been provided via hardship funding, digital access, mental health support and for student associations.

362. No specific research has been carried out on the possibility of unequal impact of the TTI requirements on groups of school students, staff or families. A number of studies and research exercises have been undertaken which include equality assessments of TTI impact. Examples are provided [NR6/186 – INQ000597254], [NR6/187 – INQ000597255], [NR6/188 – INQ000597256].

#### **H: Public communications about TTI**



363. In addition to any direct communications with schools, considerable wide ranging public facing activity was undertaken by Scottish Government communications in relation to young people. This included use of the Parent Club website and social channels including Facebook, Twitter and Instagram to engage with parents and carers, as well as activity directly targeting older groups of young people.

364. A dedicated coronavirus hub was established on the Parent Club website providing information, advice, support and extensive Q&As on a wide range of relatable topics. This was updated as restrictions eased or increased or increased to ensure parents had all the latest information. The website also sign-posted parents to NHS Inform for other accessible guidance, e.g. the Covid-19 symptom checker, as well as other relevant websites, including a Step by Step Guide to Covid-19 Testing on YouTube and the official MHRA side effect/adverse incident reporting site for coronavirus treatments and vaccines.

365. Paid for media activity was undertaken using a cross-policy, audience first approach to deliver multiple objectives under an integrated marketing campaign. For example, the Back-to-School campaign supported parents with their child's return to school and ELC settings following school closures, and encompassed Covid safety measures, parental and child wellbeing and school transitions.

366. As part of the above work, the Scottish Government Communications team produced a testing guide/flow chart testing guide/flow chart for parents to help them understand whether they should get their child tested, whether they should be off school and if so, for how long to self-isolate. This was shared as part of the Back-to-School campaign to partners (including schools), was shared on social media channels and was available on the website along with further guidance on TTI and the restrictions in place in schools.

367. In relation to young people, Scottish Government communications recognised that the pandemic was a highly challenging time for them in a key, formative point in their lives. A partnership was in place with Young Scot to support the provision of information to this audience. Young Scot was already a trusted organisation with a strong history of reach and engagement with this group.

368. Activity was informed by insight (e.g. Lockdown Lowdown reports, provided [NR6/189 – INQ000597257], [NR6/190 – INQ000597258], which reported the results of surveys of young people across Scotland (phase 1 c.2,400 young people; phase 2 c.6,000 young people)), supplemented by focus groups and testing sessions with young people. This helped to highlight key issues (education & employment, mental health, family relations) and their concerns (such as the stigmatising of young people).

369. There was collaboration with Young Scot to produce several communications campaigns, focusing on different key messages. Based on the insight this included clarifying social distancing rules, encouraging compliance with Covid-19 World Health Organisation S-19 / lockdown restrictions at key times (e.g., lockdown, return to school, new term) and motivating school pupils to undertake regular testing and isolate if positive.

370. Activity was social media led (TikTok, Instagram, Snapchat), supported by packs of materials (posters, guidance, stickers, etc) which were also sent out to every secondary school in Scotland in collaboration with Local Authorities.

371. Where appropriate this target audience was split between different age cohorts (12–17 and 18+) to ensure creative materials were engaging and relevant. There was also ongoing collaboration with Young Scot to ensure that all information for young people on the website was accurate and up to date.

372. As well as general information going out to young people, specific activity was undertaken to reach students at higher and further education institutes with key messaging. This was done in collaboration with NUS Scotland, Colleges Scotland, Universities Scotland, and colleges and universities themselves.

373. Priority messaging included encouraging compliance with all Covid-19 guidance. As with the general young people cohort, media activity was predominantly digital (paid advertising on TikTok, Snapchat, YouTube, Instagram and Facebook, as well as targeted digital ads). This was supported by the distribution of digital resource toolkits to further and higher education establishments, which included key messages for their own channels, printable posters for display on campus and digital assets for websites and social channels.

374. Materials signposted to the website [www.studentinformation.gov.scot](http://www.studentinformation.gov.scot), which was kept up to date with the latest updates and news.

375. In addition to national level communication activity the ELC Directorate undertook bespoke and targeted messaging. Communications to the ELC, SACC and Childminding sector usually followed key public announcements from the FM, DFM and CMO, the publication of any updates to national or sectoral guidance and the introduction of financial support for the sector. Methods of communication were as follows:

- Directors of education, local authority leads, and the key stakeholders represented on the CCELC/Covid Reference Group were notified of any policy updates via formal letters, with updated guidance attached;
- Services providing ELC, including school age childcare, and childminding services were notified of developments and the issue of guidance via 'Provider Notices' which, although authored by senior officials from the

Directorate, were issued by the Care Inspectorate. This is because the Care Inspectorate are the regulator for the sector and held contact details for each registered service and so this was the most efficient and effective way to reach all services directly;

- Services were also provided with information via a monthly newsletter 'Coronavirus (Covid-19): Early Learning and Childcare expansion monthly update', which was also published on gov.scot;
- Dedicated virtual events, including experts such as DCMO and Public Health Scotland officials, were organised to communicate key messages to the ELC, SACC and Childminding sector. Posters were developed by ELC Directorate officials, working closely with Public Health Scotland and Scottish Government Marketing, and issued to settings on how to stay safe over the pandemic.
- Practitioners, parents, carers and other service users were notified via the Parent Club website (including FAQs) and via a dedicated Early Learning and Childcare social media channel on Twitter
- Officials in the Directorate worked with Marketing colleagues to produce free resources for services to use to support the implementation of protective measures, including LFD testing and vaccination. These were stored in a Dropbox location which was accessible to the sector.

376. From 26 December 2020, there were also temporary restrictions placed on early learning and childcare, school age childcare and childminding services. Early learning and childcare services were only available to children of keyworkers and vulnerable children. Childminding services with a registered capacity of fewer than 12 could continue to operate their setting for all children. There was an announcement of a planned phased reopening of services in January. The guidance was based on advice provided by Early Learning and Childcare Directorate officials to Ministers. Self-Isolation guidance for students was published, along with

guidance for students returning to Higher or Further Education after the winter break and advice to providers on the setting up of on-campus testing facilities. Advice was also published by the Advisory Sub-group on Education and Children's issues in relation to the use of face coverings in college and university, and a return to school after the winter break, provided [NR6/191 – INQ000597259].

377. The Directorate for Early Learning and Childcare was responsible for the development and publication of the Covid-19 guidance for early learning and childcare, school age childcare, and childminding service and financial support to the sector. This guidance always mirrored the wider public health guidance but also included some guidance that was specific to early learning and childcare, school age childcare care, and childminding settings. The role of the Directorate for Early learning and Childcare was to liaise with all the relevant experts, to keep up to date on general public health advice and to draft the guidance, ensuring this was reflected.

378. The Directorate for Early learning and Childcare then liaised with CERG, the CCELC and the CRG to gather feedback from key stakeholders to ensure that the guidance was comprehensible for practitioners and reflected operational delivery of services. The Directorate for Early Learning and Childcare was also responsible for sharing the draft guidance with Ministers for their final approval before publication. The Directorate was also actively involved in promoting the up-take of the Covid-19 vaccination to staff and routine testing, in line with wider public health communications activity. In addition to the communication activity noted above, the ELC Directorate also facilitated a series of webinars to promote the uptake of vaccines and promote the importance of testing.

379. The above communications methods were used to promote awareness of TTI among the childcare workforce. The Registered Childcare Covid Impacts Group, comprising Scottish Government Directorates for Early Learning and Childcare, Pandemic Outbreak Management and Health and Social Care, alongside the Care Inspectorate, Public Health Scotland, and the Child Health Commissioner, met on a fortnightly basis to consider PHS data relating to the pandemic, including take-up of LFD testing by the childcare workforce. This supported the targeting of public communications activity.

380. Communications evaluation of all core public facing Scottish Government communications activity was ongoing throughout the pandemic and formed a cycle of continuous improvement. The opinion polling enabled monitoring of the general mood and attitudes towards restrictions or guidance, including TTI across the population at large (adults 18+), and painted a picture of (compliant and non-compliant) claimed behaviour among the public. It also tracked the extent to which people felt clear about what was required of them and the extent to which they trusted and felt helped by Scottish Government communications. It allowed identification of particular groups such as parents and where compliance or belief in the value of the restrictions was found to be lower within some groups, Scottish Government Communications was able to develop targeted communications interventions in response. In addition, specific evaluation research was carried out on the marketing campaigns. This measured campaign recognition, clarity of messaging and actions taken in response, assessing whether SMART objectives were met and helping to shape communications activity based on these learnings throughout the pandemic.

381. For example, evaluation of a campaign that ran in October/November 2020 in partnership with Young Scot and which aimed to encourage compliance with restrictions among 12–17 year-

olds, found that:

- i) 84% of those who had seen or heard the campaign agreed that the advertising made it clear what young people need to do to help stop the spread of coronavirus
- ii) 63% of those who had seen or heard the campaign said they would take a relevant action (e.g., wear a mask on school transport, self-isolate if symptoms).

382. The evaluation was conducted in November 2020 with 341 young people who had seen the campaign across Young Scot's social channels - Facebook, Instagram, Snapchat.

383. In addition to a wide range of general population campaigns relating to TTI which sought to encourage compliance, some specific activity was also targeted at younger adults for example, the Riskometer Campaign, which ran in the summer/autumn of 2021. This sought to communicate the importance of testing when you have symptoms and to self-isolate to stop the spread of the virus.

384. Independent evaluation of that campaign carried out among the target audience (18 to 34 year-olds) between 2–6 September 2021 found that:

- i) 90% of those who recognised that campaign (campaign recognisers), agreed that the advertising makes clear that it is important to self-isolate immediately if you develop symptoms, even mild ones.
- ii) 80% of campaign recognisers agreed that the advertising made them realise how important self-isolation is in stopping the spread of the virus
- iii) 72% of campaign recognisers claimed to have taken action as a result of the campaign.

385. The effectiveness of the early learning and childcare, school age childcare, and childminding guidance, which was guidance incorporating a range of aspects related to how providers could

operate during the pandemic, was monitored through engagement with key stakeholders, particularly through the CERG, the Critical Childcare and Early Learning and Childcare group and the CRG. These groups supported the development of the guidance which was regularly updated both to reflect changing public health messaging and feedback from the sector, and to make changes where it became clear that messaging was not having the desired effect. For example, ELC Directorate undertook targeted engagement activity with the ELC sector on vaccination and LFD testing when data showed that vaccination and testing rates among ELC staff were lower than in other parts of the education sector.

## **I: Lessons learned**

386. Further information on the preparedness of schools, FE, HE and early years settings is included within Section D of this statement. The consideration of different age groups and the ability to self-test and read instructions were fed into the development of the Standard Operating Procedures (SOPs) and clinical advice which shaped the TTI system.

387. As expected, the pandemic demanded some reflection on our approach as well as consideration of what we could do better in the future. At the outset, the Scottish Government and all of our partner agencies and organisations recognised the need to work together to build an effective response. Regular forums and information sharing mechanisms were created, which helped build trust and co-operation between agencies. In terms of enforcement, the use of the 4Es and a focus on prevention and education before enforcement helped foster public trust and voluntary co-operation, reducing the need for more punitive measures. The creation of the Independent Advisory Group on police powers during the pandemic also ensured reliable scrutiny of powers, as well as a



vehicle to consider emerging challenges and stakeholder concerns, with an on-going focus on equality and human rights.

388. However, there are undoubtedly areas that could be improved moving forward. Given the nature of the pandemic, our response was constantly evolving, which may have led to confusion among the public, particularly with the changing rules and regulations. This, in turn, could have resulted in unintentional non-compliance and public criticism. While the unprecedented nature of the pandemic often required an adaptive approach, it highlighted the critical need for clear, consistent communication. This is especially important when it comes to enforcement and ensuring officers are properly trained to interpret and apply complex, rapidly changing regulations.

389. Between June 2020 and October 2022, the Scottish Government published reports to the Scottish Parliament every two months on provisions in the Scottish Coronavirus Acts and provisions in the UK Coronavirus Act 2020 for which the Scottish Parliament gave legislative consent, plus secondary legislation whose main purpose is coronavirus related. These reports set out the status and operation of each measure. Where relevant and available, this included data relating to the frequency of the measure's use.

390. On 25 August 2021, Mr. John Scott KC presented the Scottish Police Authority (SPA) with the substantive findings of the Scottish Police Independent Advisory Group (IAG) for Covid-19 IAG on Police Use of Temporary Powers related to the Coronavirus Crisis, provided [NR6/192 – INQ000182918].

#### Covid-19 Children and Families Collective Leadership Group (CLG)

391. The Covid-19 Children and Families CLG undertook two "Lessons Learned" exercises in September 2020 and May 2021 [NR6/193 –

INQ000571185] and [NR6/194 – INQ000571183]. These focused on overall issues rather than specifically political and administrative decision-making within Scottish Government. The Lessons Learned exercise in May 2021 highlighted:

- Partners and stakeholders received recurring requests for information from different departments during the pandemic that had implications for their limited capacity. There is a need for better co-ordination and a process to gather and analyse data for learning, collectively informing decisions. Data collection and analysis should be more closely linked to outcomes.
- CLG also recommended that current and future planning for crisis responses are more clearly embedded in the four pillars of the Christie Commission report on the future delivery of public services:
  - A decisive shift towards prevention.
  - Greater integration of public services at a local level driven by better partnership, collaboration and effective local delivery.
  - Greater investment in the people who deliver services through enhanced workforce development and effective leadership.
  - A sharp focus on improving performance, through greater transparency, innovation and use of digital technology.

### **Statement of Truth**

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

**Signed:**

Personal Data

**Date :** 16 April 2025