

**UK Covid-19 Inquiry Before Baroness Heather Hallett**  
**Module 8 Hearings: 29 September – 23 October 2025**

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**WRITTEN CLOSING STATEMENT**  
**on behalf of**  
**THE SCOTTISH GOVERNMENT**

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**Introduction**

1. The Scottish Government welcomes the Inquiry's investigation of the impact of the pandemic on children and young people in Module 8 as part of its commitment to promoting and embedding children's rights. It wishes to assist the Chair in considering where support and resources could be put in place to mitigate the impacts of the next pandemic and how to protect children and young people in the future.
  
2. The Scottish Government has provided the Inquiry with 1,730 documents for Module 8, including 11 statements from Ministers and civil servants. It has attended all of the hearings and welcomes the Children and Young People's Voices Report<sup>1</sup> which highlights the variation in experiences of the pandemic and the impact on children and young people from vulnerable and at-risk groups.
  
3. This Closing Statement addresses key themes from the Module 8 hearings of preparedness; school closures; provision of education during lockdowns; exams; impact assessments; vulnerable children; infection control and ventilation; relaxation of restrictions on outdoor spaces; policing of children and young people and planning for the future.

**Issue 1: Preparedness**

4. The Scottish Government accepts that on reflection, and with the benefit of hindsight, it ought to have focused more on planning for mass school, early learning, and wider childcare closures in early 2020 rather than primarily focusing on ad hoc closures and the sustainability of the education and childcare sectors. It also acknowledges that in March 2020 the decision to close schools to the majority of children and young people in Scotland had a significant impact on them. The decisions taken reflected the pace of developments with the virus and the circumstances and understanding of infection

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<sup>1</sup> INQ000587936

risk at the time. There was no vaccine, understanding of the virus was still developing and the extent to which it was transmitted by children was not known.

5. In the second period of closures in 2021, the Scottish Government took a different approach. It had learned lessons from the first lockdown and adopted a phased approach informed by the scientific advice. By January 2021, significant progress had been made in developing remote learning infrastructure for school age children. There was more preparation, planning, and guidance than in 2020, and the process was better understood by the education and childcare sectors, children, and parents. The Rt Hon John Swinney MSP, First Minister of Scotland, gave evidence that in his view access to remote learning was stronger in 2021 than in 2020, a tangible example of where the Scottish Government had done things differently and improved on what it had done in 2020.<sup>2</sup>
  
6. There was also greater understanding of the virus. The evidence that transmission and infection was lowest among the youngest children was not known to the Scottish Government in March 2020. As highlighted by Professor Sir Chris Whitty, stating that primary school age children played a limited role in transmitting Covid-19 would have been a “*fair statement*” to make in June 2020, although it was not definite.<sup>3</sup> By 2021, this was clearer.
  
7. In 2021 the Scottish Government adopted a targeted approach based on priorities. Children with additional support needs were prioritised for return to their own school or early learning and wider childcare setting. The hub model used in 2020 was not used in 2021.<sup>4</sup> This enabled children with additional support needs to attend their own school or early learning and wider childcare setting. Given the evidence that transmission and infection was lowest among the youngest children, Early Learning and Childcare settings (ELC) and those in Primary 1 to Primary 3 returned to school first,<sup>5</sup> alongside vulnerable children and selected senior phase learners working towards their exams. The regional approach advocated by Professor Whitty for consideration by the UK Cabinet Office in December 2020 was not adopted in Scotland. As he recognised in his evidence, this would not have been effective as

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<sup>2</sup> Transcript 8/113/4-9

<sup>3</sup> Transcript 13/64/8-19

<sup>4</sup> INQ000649083\_144, Witness Statement of DG Education and Justice, at §494

<sup>5</sup> Children in Primary 1 to 3 in Scotland are between 4 and 7 years old – see INQ000587936\_248, the Children and Young People’s Voices Report, Appendix F: UK Education Systems by age and stage.

there was a relatively short period of time between the wave of Covid-19 infections maximising in the south of England and maximising in the north of England.<sup>6</sup>

8. The Scottish Government recognises that school, early learning and wider childcare closures had an impact on all children and young people. It was taking decisions on a prospective basis, and it is potentially problematic to judge that retrospectively. As noted by Counsel to the Inquiry in her opening statement, the Inquiry is not being invited to “*assess decision making through the perfect lens of hindsight*”.<sup>7</sup> The Scottish Government accepts that the educational impact and potential damage to the wellbeing and development of children of school, early learning and wider childcare closures were foreseeable. Nonetheless, closures of the scale and length which occurred were unforeseeable. The Scottish Government accepts that there should have been more preparation, planning and guidance for mass school closures in early 2020. National school closures of the scale and length which occurred were unprecedented, as was the cancellation of exams.
9. Before making the decision to close schools and early learning and wider childcare settings, the Scottish Government did not know that the UK Government would later introduce the furlough scheme. This was not announced until afterwards. The Scottish Government was concerned about closing schools when parents had to go to work. Education was not operating in a compartment of its own, but in the wider sector of public policy. The initial school closures in March 2020 were carried out as an emergency measure on the advice of SAGE. There were few harm-free decisions open to decision makers who were operating in an unknown environment without full scientific knowledge of the risks from the virus. Most decision makers were deeply committed public servants doing their best, but as highlighted by Professor Whitty, “*were forced into a choice of two terribly bad options*”.<sup>8</sup>
10. Most people do not experience the intense pressures of executive office. It can be difficult to comprehend and, with the passage of time, easy to forget, the extent to which those pressures were intensified at the start of the pandemic. It was necessary to make decisions with unusually great consequences, while grappling with the uncertainty of what would happen in the following days and weeks. Mr Swinney told the Inquiry that, “*we undertook a series of decisions that were dealing with an*

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<sup>6</sup> Transcript 13/140/8-23

<sup>7</sup> Transcript 1/11/7-8

<sup>8</sup> Transcript 13/70/4-5

*unprecedented set of circumstances, and we took the best decisions available to us at the time to protect the wellbeing of children and to ensure that their education and their welfare was supported by our actions”.*<sup>9</sup>

11. It is in that context that with support from Cabinet, as the main decision-making body in Scotland, the Right Honourable Nicola Sturgeon MSP, former First Minister and the then Deputy First Minister Mr Swinney led the Scottish Government in taking all necessary measures to minimise the harm caused as a result of Covid-19. The Covid-19 Children and Families Collective Leadership Group (CLG) was established in May 2020 and played a critical role in shaping the Scottish Government’s approach with respect to children and young people. The CLG reported to Mr Swinney and the Communities and Public Services Ministerial Group. Membership of the CLG included senior representatives of local government, the education sector, the third sector and other key organisations, reflecting the Scottish Government’s collective and inclusive approach to leadership during the pandemic.

## **Issue 2: School closures**

### **Closure of schools and ELC settings in March 2020**

12. The Scottish Government has ultimate responsibility for the education and safety of children in Scotland, but operational delivery is dependent on the actions of local authorities in accordance with statute. As highlighted by Mr Swinney in his evidence, the Scottish Government had no legal power to close schools.<sup>10</sup> This was done by agreement on 18 March 2020. In his statement, Professor Russell Viner described closure of schools in March 2020 as *“the only decision that could have rationally been made”*.<sup>11</sup> In his oral evidence, he explained that there was *“extraordinary uncertainty... we knew almost nothing about transmission of the virus from children and between children in schools”*.<sup>12</sup> The Scottish Government acknowledges the finding in the Report for Module 2, at §4.110, that on 18 March 2020, Ms Sturgeon and Mr Swinney decided schools should be closed in Scotland and that the Scottish Cabinet was not consulted. It accepts that following the Cabinet meeting of 17 March 2020, it would have been preferable for the Scottish Cabinet to have been consulted again before the decision was taken on 18 March 2020 to close schools.

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<sup>9</sup> Transcript 8/112/10-15

<sup>10</sup> Transcript 8/172/19-21

<sup>11</sup> INQ000588157\_24, Witness Statement of Professor Russell Viner, at §3.31

<sup>12</sup> Transcript 15/10/3-6

13. The safe operation of schools also requires adult staff members to be well, available to attend school and to interact with children and other adult staff members. As explained by Mr Swinney, there was increasing concern that the school system would be unable to safely operate with the degree of staff absence due to Covid-19.<sup>13</sup> In addition to this, schools were being inundated with parental concerns and facing a decline in pupil attendance.<sup>14</sup>
14. Due to the statutory context in Scotland, partnership was essential. Time was invested by the Scottish Government in creating a collaborative environment with local authorities in early 2020 to ensure that, if it became necessary to close schools, there would be a broad consensus that this was appropriate.<sup>15</sup> The Inquiry has heard evidence from the Convention of Scottish Local Authorities (COSLA), that a lot of information was communicated to local authorities by the Scottish Government. They were not kept at arm's length.<sup>16</sup> One of the key strengths of the Scottish Government was partnership working and there was a collective effort within the Government itself.
15. As Mr Swinney was both the Cabinet Secretary for Education and Deputy First Minister, he was well placed to ensure a coordinated approach across government departments, which put the interests of children and young people at the heart of decision-making. The Learning Directorate, under Mr Swinney's effective leadership, was able to set its own agenda. Decisions were not made outside the Directorate by people who did not understand the issues with which they were dealing. As a result, some of the issues addressed in the evidence of Sir Jon Coles were not experienced in Scotland.<sup>17</sup>
16. As highlighted by the Department for Education of the UK Government: "*The autonomy and accountability of local authorities and schools in delivering social care and education is a feature of the system, not a bug. The system is designed to put as much decision making as possible in the hands of those closest to the children it serves.*"<sup>18</sup> The Scottish Government agrees. Local decision-making does not reduce the role of the Scottish Government to a "passive bystander". As mentioned by the Rt Hon Mark Drakeford MS, the role of the government is to provide advice to give those

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<sup>13</sup> Transcript 8/167/13-18

<sup>14</sup> Transcript 8/168/7-10

<sup>15</sup> Transcript 8/173/11-18

<sup>16</sup> Transcript 8/29/8-11

<sup>17</sup> Transcript 5/102/9 - 5/103/25

<sup>18</sup> Transcript 16/155/4-8

who have responsibility for making the decisions a framework within which they can feel confident that they can operate.<sup>19</sup> This reflects the approach adopted in Scotland. As explained by Mr Swinney, what the Scottish Government seeks to do is *“to create a collaborative framework... to help those responsible for the operational delivery of education to plan”*.<sup>20</sup>

17. As Mr Swinney explained in evidence, a letter dated 4 March 2020 from the Scottish Government to, amongst others, Directors of Education and Local Authority Chief Executives<sup>21</sup> was an example of the Scottish Government creating a collaborative environment and working together with the education sector to face a serious threat.<sup>22</sup> Mr Swinney referenced resources and approaches to ensure the continuity of education in the event of school closures which are set out in the letter.<sup>23</sup> It also refers to Health Protection Scotland guidance provided on 26 February 2020. This is described as the key source of advice for all schools and educational settings. It is clear from the terms of the letter that the Scottish Government did not intend to encroach upon the work of the Local and Regional Resilience Partnerships, *“who have a crucial role to play in emergency planning and responding to significant incidents in each area”*.<sup>24</sup> As Nicola Dickie explained in evidence, *“had government come out with a lot of guidance, had it not been developed alongside people who were working in our schools or our heads of education or, indeed, our local authority chief execs... the guidance would probably not have been fit for purpose”*.<sup>25</sup>

18. The letter of 4 March 2020 noted that the Scottish Government was working closely with the Scottish Negotiating Committee for Teachers (SNCT) around business continuity planning.<sup>26</sup> Mr Swinney explained in evidence that the SNCT is the negotiating forum between the Scottish Government, local authorities, and the teaching trade unions on terms and working conditions within the education sector.<sup>27</sup> These discussions were an important aspect of planning and covered, for example, agreement on changes to the national terms and conditions for teachers to allow them to work additional hours, or vary rules around class sizes, in order to maintain

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<sup>19</sup> Transcript 15/126/13-17

<sup>20</sup> Transcript 8/150/8-9 and 8/150/16-18

<sup>21</sup> INQ000520406

<sup>22</sup> Transcript 8/127/15-19

<sup>23</sup> Transcript 8/134/15-23

<sup>24</sup> INQ000520406\_1

<sup>25</sup> Transcript 8/12/16-21

<sup>26</sup> INQ000520406\_3

<sup>27</sup> Transcript 8/131/5-8

educational continuity. This was based on work previously done to prepare for the swine flu pandemic.

19. Once the initial decision had been taken to close schools and early learning and wider childcare, the Scottish Government took action to assess the wider impact of pandemic restrictions. Its Four Harms Framework sought to balance direct risks from Covid-19 with wider harms including the impact on children and young people and economic harms. It also carried out a retrospective impact assessment on the closure and re-opening of schools in July 2020, an approach Professor Turner recommended.<sup>28</sup>

20. When schools and early learning and wider childcare closed, the Scottish Government provided guidance to local authorities explaining the benefits of cash support for families to replace free school meals. As explained by Ms Kate Anstey, from Child Poverty Action Group, many local authorities in Scotland adopted a cash first approach<sup>29</sup> which was “the preferred option” providing choice, opportunity to stay safe by shopping online, dignity and discretion.<sup>30</sup>

#### Re-opening of schools and ELC settings in 2020

21. From April 2020, Mr Swinney’s intention was clear: to get schools and early learning and childcare back open as soon as possible with as many children and young people learning ‘in person’ as was safely possible.<sup>31</sup> In April 2020, the Covid Education Recovery Group (CERG) was established to consider how to re-open schools and ELC settings safely and in full. It worked with the Scottish Government, SAGE, the Scottish Covid-19 Advisory Group, Public Health Scotland and other key experts to advise on the options. Alongside this, a critical childcare group was established to focus on the reopening of early learning and wider childcare to support people who were required to continue to attend work.

22. The Strategic Framework for Re-opening Schools, Early Learning and Childcare Provision in Scotland was published in May 2020, having been developed jointly with local government partners and support from stakeholders across the system, including CERG. Underpinned by an initial impact assessment, the Strategic Framework was developed in accordance with the overall approach guiding the

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<sup>28</sup> Transcript 7/90/20 – 7/91/7

<sup>29</sup> Transcript 3/85/10-12

<sup>30</sup> Transcript 3/85/17-20

<sup>31</sup> INQ000588143\_61, Witness Statement of John Swinney, at §231

Scottish Government at that time on arrangements to transition out of lockdown. In particular, the Framework highlighted the range of harms experienced by children and young people and the balance of inter-related harms to minimise overall harm.

23. As transmission of the virus became more controlled and R (the reproduction rate) fell consistently to below 1, the Scottish Government prioritised the re-opening of schools and early learning and childcare. This recognised the wider harms, including 'hidden' harms, caused by closure on children's education, health and well-being.<sup>32</sup>

24. In agreement with local authorities, professional associations and parent representatives, it was announced on 21 May 2020 that schools would return on 11 August 2020 on the basis of blended learning. The planned return, subject to scientific advice that it was safe to do so, was one week earlier than planned for most pupils, while early learning and wider childcare were to open over the summer.<sup>33</sup> The Strategic Framework set out a range of national expectations to support local delivery planning; accepting that there would not be a 'one size fits all' approach given local circumstances. A range of approaches to local planning emerged, the most common of which was to provide two days of in-school learning per week for most children.

25. On 16 June, joint advice was provided to Mr Swinney by the Director of Learning and the Chief Executive of Education Scotland, on local plans for the implementation of blended learning from 11 August.<sup>34</sup> This advice raised concerns that some local plans for blended learning proposed very limited time in school for many children and young people given the significant logistical and cost challenges involved. Mr Swinney asked officials to consider further ways to increase time in school and noted that a key factor would be scientific advice on the need for physical distancing.

26. Mr Swinney decided to establish the Advisory Sub-Group on Education and Children's Issues to discuss this issue. The Scottish Government tasked the sub-group with providing more detailed advice on physical distancing in schools. Following that advice, Mr Swinney decided that a full return to school, without physical distancing, should take place on 11 August. Mr Swinney considered the approaches being taken elsewhere, the diminishing number of Covid-19 cases in Scotland, the role of children

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<sup>32</sup> INQ000588143\_63, Witness Statement of John Swinney, at §238 to §239

<sup>33</sup> INQ000530367\_1

<sup>34</sup> INQ000615539

in transmission, on which the science was still unclear, and significant concerns around wider societal harm and harm to well-being.<sup>35</sup>

27. The Scottish Government communicated effectively ahead of schools reopening in August 2020. The Scottish Government's aim was to open schools as soon as possible but, it was imperative to follow the scientific advice available at the time. This is why the blended learning model was established and published in May 2020. At this time, it was not anticipated that schools would be able to re-open fully in August 2020. The data improved more rapidly than expected, leading to a change in direction. In June 2020, local authorities were advised that, with mitigating measures in place, schools should be open to all learners after the summer break. The reasons for this change in direction were made clear in a statement to the Scottish Parliament by Mr Swinney on 23 June 2020, shortly before the end of the school term. The decision to re-open schools was taken as quickly as possible. It was based on the available scientific advice and data. The Scottish Government recognises that the timing of this announcement was difficult for schools at the time, but the priority was to re-open schools as early as possible, given the negative impact of closures on children.

28. When re-opening schools, the Scottish Government advised schools not to mandate attendance, acknowledging that parents and learners may be concerned about the return to school.

29. ELC opened earlier than schools, in June and July, as many ELC settings are not tied to school term times. In May 2020, consideration was also given to the earlier reopening of fully outdoor ELC on 27 May 2020.<sup>36</sup> This approach was agreed by Ministers, and fully outdoor ELC was permitted to reopen, alongside childminding settings, from 3 June 2020. Advice on reopening these settings was supported by information provided on the impact of reopening on transmission rates. Officials also provided advice and guidance on the reopening of all other registered early learning and wider childcare from 15 July 2020, as well as advice on options for allowing informal childcare to restart. The phased approach to reopening of the sector was based on a rights-based approach, an assessment of risk and the ability of different parts of the sector to put mitigations in place.

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<sup>35</sup> INQ000649083\_105-106, Witness Statement of DG Education and Justice, at §345

<sup>36</sup> INQ000261731

### School closures in January 2021

30. The Scottish Government's approach to school closures in January 2021 was informed by lessons learned from the first period of restrictions. An important lesson related to the provision of learning for certain groups and vulnerable children and young people. In the second phase of the pandemic, there was provision for these groups in all schools rather than hubs. This took account of feedback to ensure improved services were made available.<sup>37</sup> This refinement of hub provision, based on the feedback of local authorities, allowed children to attend their usual place of learning.
31. In November 2020, contingency plans in the event of wider school closures were approved by Mr Swinney. These plans ranged from national to local to individual setting closures. This provided for the Scottish Government to work collaboratively to agree high level contingency plans with local authorities detailing how critical education and ELC would be delivered based on local circumstances.<sup>38</sup>
32. In November 2020, Education Scotland understood that local authorities were concerned about the increasing level of absence in schools. There were concerns that the level of self-isolating students would interrupt learning and that the levels of self-isolating staff would be unsustainable. In December 2020, schools closed as planned for the Christmas holidays. On 19 December 2020 Cabinet decided that further restrictions on in-person learning were a necessary measure.<sup>39</sup> This decision took into consideration a range of factors, including a four harms assessment, the emergence of the new alpha variant, the path of the virus at the time, and the impact of further closures on children, young people, parents and carers. On the same day Ms Sturgeon announced the extended holiday period for most children until 11 January 2021 and that learning would then be online until 18 January (other than for the children of key workers and the most vulnerable). Thereafter, the intention was for pupils to return to school in person.
33. On 31 December 2020, the Advisory Sub-Group on Education and Children's Issues considered the risks of a return to education across all stages. Its advice was that schools and ELC (except childminders caring for fewer than 12 children) should remain closed beyond 18 January 2021 on a precautionary basis, other than to

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<sup>37</sup> INQ000649083\_87, Witness Statement of DG Education and Justice, at §265

<sup>38</sup> INQ000649083\_118, Witness Statement of DG Education and Justice, at §391

<sup>39</sup> INQ000649083\_119, Witness Statement of DG Education and Justice, at §393

children of key workers and other priority groups. The Group emphasised the important principle that closing schools should be a last resort due to the negative health, educational and social impacts that school closures can have on children, particularly the most vulnerable. Although previous modelling had shown that schools did not make a large contribution to R, it was advised that closures at this time were likely to contribute to a reduction in transmission. There was little headroom to allow schools to open and contain R at or below 1.<sup>40</sup>

34. On 4 January 2021, the Scottish Cabinet agreed that further closures were a necessary measure to suppress the virus. When Cabinet reviewed the situation on 19 January 2021, it decided not to reopen schools or ELC beyond the groups already attending in-person before mid-February.
35. The Scottish Government learned lessons from the first lockdown by taking a phased approach which was informed by the scientific advice. On 16 February 2021, the First Minister confirmed the phased re-opening of schools, which had provisionally been announced on 2 February, starting with the return of ELC and Primary 1 to 3 full time from 22 February 2021. In March 2021, there was a phased return for school age childcare and a return to full time in-school learning for all other Primary pupils (Primary 4 to 7)<sup>41</sup> and remaining secondary school pupils<sup>42</sup> (priority for in-school time was given to senior phase pupils).
36. Following the Spring break in April 2021, there was a full time return for almost all pupils. This decision was taken by Cabinet on 2 March 2021, following consultation with COSLA and local authorities as well as discussions with CERG and scientific advice from the Advisory Sub-group. Cabinet decided a phased reopening was appropriate because controlling the spread of the virus was still reliant on significant restrictions on individuals, the use of social distancing and other public health measures to suppress transmission. The contribution that school and ELC closures could make to suppression was balanced against the impact closures were having on children and young people and this led to the decision to begin a phased reopening.<sup>43</sup>

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<sup>40</sup> INQ000649083\_117, Witness Statement of DG Education and Justice, at §383 to §385

<sup>41</sup> Children in Primary 4 to 7 in Scotland are between 7 and 11 years old – see INQ000587936\_248-249, the Children and Young People’s Voices Report, Appendix F: UK Education Systems by age and stage.

<sup>42</sup> Secondary school children in Scotland are aged between 11 and 18 years old – see INQ000587936\_249 the Children and Young People’s Voices Report, Appendix F: UK Education Systems by age and stage.

<sup>43</sup> INQ000649083\_133-134, Witness Statement of DG Education and Justice, at §447 to §449

## Recovery

37. The Scottish Government was acutely aware of the range and depth of impacts of the closure of schools and ELC. This was a result of a sustained endeavour to understand the nature and scope of those impacts drawing from a broad range of evidence, including from children and young people themselves. The need for a recovery strategy to mitigate and redress the negative impact on learning, attainment, and development was clear. The Scottish Government did not adopt a narrow approach, focused exclusively on learning. It was recognised that a whole systems approach was necessary.
38. In January 2021, the Scottish Government and Education Scotland jointly published an Equity Audit to share understanding of the impact on children and young people from disadvantaged backgrounds. It informed education recovery and the implementation of the ongoing Scottish Attainment Challenge, which seeks to address the poverty-related attainment gap. This is a priority for the Scottish Government.
39. Significant efforts are being made in order to assist children and young people to recover from the impacts of the pandemic. It is recognised that there is further work to be done and the Scottish Government remains committed to addressing the impact of the pandemic on children and young people.
40. A comprehensive Covid Recovery Strategy, outlining key actions on education recovery, was published in October 2021, focussing on tackling inequalities. The Scottish Government provided further support for learners who were sitting exams in 2022, rolled out the Scottish Child Payment and provided funding for mental health and wellbeing support in schools and recruitment of additional teachers and support staff.
41. As highlighted by Ms Kate Anstey, from Child Poverty Action Group, policies such as the Scottish Child Payment have mitigated some of the effects of child poverty and reduced child poverty rates.<sup>44</sup> Throughout the pandemic, children were able to access the Best Start Grant and Best Start Foods. More recently, the Scottish Government has provided £3.5 million to the NHS to support the development of regional CAMHS services.

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<sup>44</sup> Transcript 3/67/1-6

42. ELC play a critical role in helping children to recover from the pandemic, offering children language-rich environments, access to specialist support, social interaction, and opportunities for play and learning, including outdoors. All three- and four-year-olds in Scotland, and those two-year-olds who need it most, have been eligible for 1140 hours of funded early learning and childcare since August 2021. Scotland is the only part of the UK to offer 1140 hours of funded early learning and childcare per year to all eligible children regardless of their parents' working status.
43. To address growing concerns about children's speech and language development, the Scottish Government has invested in the National Early Language and Communication Team. These are senior speech and language therapists who work across Health and Education to take forward practical measures to support children's early speech and language development. The Scottish Government has also provided funding for two pilot projects delivered in partnership with the Scottish Book Trust: one to support ELC to strengthen their language-rich environments through a greater emphasis on reading, storytelling and high-quality early literacy experiences, and the other to build staff confidence in promoting early language development.
44. Following the lifting of restrictions, the Bookbug and PlayTalkRead programmes recommenced in library and community settings. In addition to a book gifting programme, Bookbug provides free sessions for parents and carers with young children to read, sing and play together. The PlayTalkRead programme tours every local authority area in Scotland providing parents and carers with free or low-cost ideas for playing, talking and reading at home.

### **Issue 3: Provision of education during Lockdown**

45. In his evidence, Mr Swinney noted that Scotland's national online learning platform, Glow, provided the foundations for continuity of education at the start of the pandemic. Other measures, such as the investment in e-Sgoil, complemented what was being undertaken by individual schools.<sup>45</sup>
46. Glow was used prior to the pandemic for continuity of education locally when schools closed, such as due to adverse weather. Therefore when the decision was taken in March 2020 to close schools for most learners, Glow was available to play an important role in ensuring continuity of education at home. On 20 March 2020,

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<sup>45</sup> Transcript 8/115/4-16

Education Scotland wrote to Directors of Education offering support with ensuring the continuity of children and young people's learning.<sup>46</sup> On 23 March 2020, Education Scotland published resources and advice in the form of 'Wakelets' including a collection of links to online materials that could be used to assist learning at home, provide play pedagogy and support children at the points of transition.<sup>47</sup>

47. Education Scotland monitored access and use of Glow, and the Scottish Government was encouraged by the level of uptake at the start of the pandemic. It recognised however that there was a need for further national support for schools and authorities to support remote learning. From March to May 2020, the Scottish Government worked with COSLA, the Society of Local Authority Chief Executives (SOLACE) and other stakeholders to assess and address digital access and inclusion gaps.

48. During May and June 2020, an e-Sgoil pilot took place to support senior phase learners about to embark on National Qualifications courses. Learners had opportunities to engage in live lessons over 6-week courses to help start their studies during school closures at N5, Higher and Advanced Higher levels. E-Sgoil had been established in 2016 to provide a wider and more equitable choice of subjects for pupils and to support the expansion of Gaelic medium education. E-Sgoil extended its offer nationally to schools across Scotland as a pilot, following which Mr Swinney accepted the proposal to develop a national e-learning offer to provide pupils with access to high quality online lessons.

49. Under the plans, developed in partnership between e-Sgoil, Education Scotland, the Association of Directors of Education in Scotland (ADES) and the Scottish Government, local authorities and schools in Scotland were able to access live lessons, pre-recorded lessons, and static online learning resources on a range of subjects, taking shared ownership for delivery.<sup>48</sup> Education Scotland complemented this with a number of newsletters and publications, in particular a Parents and Carers' newsletter and a Practitioners' newsletter. A key feature was its "Scotland Learns" publication which was launched to support both practitioners and parents whilst schools were closed, and children were learning at home. 'Scotland Learns' was a regular feature from May 2020 onwards.

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<sup>46</sup> INQ000530022

<sup>47</sup> INQ000649083\_69, Witness Statement of DG Education and Justice, at §208

<sup>48</sup> INQ000649083\_71-72, Witness Statement of DG Education and Justice, at §219

50. An important aspect of ensuring the continuity of education at home was to address the need for devices and connectivity for young people and children living in poverty during the pandemic. In April 2020, Mr Swinney made it clear to officials that his level of ambition and expectation was high and that, as there was likely to be disruption to formal schooling for some time, the need to move boldly on the provision of devices was acute.<sup>49</sup> Recognising that schools would know their children best, COSLA, SOLACE, and the ADES agreed to undertake a survey of local authorities to attempt to identify quickly the level of demand both in terms of lack of access to a device and in terms of connectivity. That work estimated that approximately 60,000 devices could be required for children and young people who would otherwise be unable to access remote learning and this was used as an indicator to guide decisions around funding and procurement. This figure was used as a starting point for digital inclusion interventions by the Scottish Government.

51. Addressing the digital divide underpinned the Scottish Government's investment of £30 million to provide laptops and internet access for disadvantaged children and young people, which was announced on 21 May 2020 by Ms Sturgeon.<sup>50</sup> £25 million was directed towards schools and £5 million directed towards further and higher education. At that time, initial estimates were that this funding could provide support to around 70,000 pupils. As noted above, access to remote learning was far stronger in 2021 than in 2020. In its Witness Statement to the Inquiry, the Educational Institute of Scotland noted that "*Teachers responded with greater speed to the move to remote learning on this occasion, having learned from their experience in March 2020, and were quick to work together collegiately, sharing good practice and resources to support education continuity*".<sup>51</sup>

52. The Scottish Government has pursued strategic and coordinated investment in national e-learning since the pandemic. The National e-Learning Offer (the Offer) was initially a pandemic response. It drew upon the experience and expertise that e-Sgoil and the Regional Improvement Collaboratives at the time already had in delivering remote learning. Uptake continues to grow post-pandemic as educators and learners adopt the Offer as a part of their curriculum design. In addition, local authorities continue to evolve their local online offers, and a variety of other commercial providers

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<sup>49</sup> INQ000588143\_45, Witness Statement of John Swinney, at §160

<sup>50</sup> INQ000649083\_67, Witness Statement of DG Education and Justice, at §200

<sup>51</sup> INQ000588005\_54, Witness Statement of the Educational Institute of Scotland, at §10.3

supply a range of online learning resources. Online learning can complement in-person teaching or present an alternative where options are not available locally.

53. As part of the Offer, the Scottish Government funds e-Sgoil to provide a range of resources to support learning across the curriculum at a national level. £1.8 million of funding is being provided to e-Sgoil in the 2025/26 Financial Year, supporting delivery of a range of live, recorded, and supported resources. Scottish Government officials are currently undertaking a rapid review of the online learning landscape in Scotland to provide stronger strategic direction, considering the funding landscape, and recognising the range of existing offerings and the opportunities that online delivery presents to teachers and learners.

#### **Issue 4: Exams**

##### **Alternative Certification Model in 2020**

54. Ms Jean Blair, from the Scottish Qualifications Authority (SQA), described in her evidence the unprecedented nature of cancelling the exam diet in Scotland in 2020: *“Exams have run in Scotland since 1888. They ran through the First and Second World Wars. It is the first time the exam diet has been cancelled”*.<sup>52</sup> The decision to cancel the 2020 examination diet was based on public health advice that it was not safe to proceed. The subsequent Rapid Review of the National Qualifications Experience 2020 by Professor Mark Priestley (the ‘Priestley Review’) found that respondents to its panels and interviews generally agreed that there was no feasible alternative to cancelling the exams diet and were supportive of this decision.<sup>53</sup>

55. The Scottish Government commissioned the SQA to develop an Alternative Certification Model (ACM) to be used in place of the 2020 exam diet. It is accepted by the Scottish Government that it had asked the SQA to do something difficult. The Priestley Review noted that it is widely accepted that no system could be perfect under the circumstances.<sup>54</sup>

56. Respecting the independence of the SQA, Scottish Ministers were properly not involved in determining the nature and extent of any moderation of centre estimates. The SQA presented pre-release awards data to the Scottish Government on 30 July 2020. The Scottish Government was advised that the SQA had considered its

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<sup>52</sup> Transcript 10/150/23-25

<sup>53</sup> INQ000182832\_11

<sup>54</sup> *ibid*

equalities duties at each decision point and stage in the process of developing, refining and implementing the model.<sup>55</sup> The actual impacts in practice of the SQA's approach to moderation on pupils from schools in more deprived areas was not known by the Scottish Government until after Results' Day.

57. The SQA developed and implemented an approach out of a concern to ensure the credibility and standards of awards. This was reflected in the three core principles that were to inform SQA's development of the model. These core principles were: (a) fairness to all learners; (b) safe and secure certification of SQA qualifications, while following the latest public health advice; and (c) maintaining the integrity and credibility of the qualifications system, ensuring that standards are maintained over time, in the interests of learners.<sup>56</sup> Ms Blair told the Inquiry that, although these principles were set by Mr Swinney, the SQA helped to inform them and took them to their board.<sup>57</sup> The principles reflected the Scottish Government's objective that, despite the unprecedented circumstances faced at that time, the integrity, credibility and standards which are embedded in Scotland's highly respected teaching and education system would be preserved in order to deliver a fair outcome to all young people unable to sit exams or submit coursework in the usual way.<sup>58</sup> The Priestely Review, found that "*[a]ll parties involved in the process were found to have acted with integrity, with the best interests of students in mind*".<sup>59</sup>

58. It is acknowledged by the Scottish Government that the model used in 2020 left many young people feeling that their future had been determined by statistical modelling rather than their own capability and capacity and led to a high level of pupil and parent criticism and anxiety.

59. The Children and Young People's Commissioner for Scotland, Ms Nicola Killean, gave evidence that in relation to delegation of operational delivery responsibility, there were unclear lines of accountability and responsibility in Scotland during the pandemic.<sup>60</sup> One example given by Ms Killean was the change to exams and qualifications in Scotland. Many aspects of education in Scotland are delegated by central government. Ms Jean Blair of the SQA set out the statutory functions that applied to

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<sup>55</sup> INQ000588143\_52, Witness Statement of John Swinney, at §188

<sup>56</sup> INQ000588049\_26, Witness Statement of Jean Blair, at §134

<sup>57</sup> Transcript 10/152/20-21

<sup>58</sup> INQ000588143\_53, Witness Statement of John Swinney, at §190

<sup>59</sup> INQ000182832\_5

<sup>60</sup> Transcript 16/6/18-21

the SQA at the time in her statement as including “to determine the entitlement of individuals to SQA qualifications” and “to award and record such a qualification”.<sup>61</sup>

60. As Mr Swinney explained in evidence, the conduct of examinations in Scotland is undertaken at arm’s length from government. Mr Swinney respected those arrangements in his approach with the SQA on this issue,<sup>62</sup> When concerns were raised, these were passed to the Chief Executive of the SQA to respond. Following the cancellation of the 2020 exam diet, the SQA accepted Mr Swinney’s commission to develop the ACM and acknowledged that the final decision on certification was for the SQA.<sup>63</sup> It is submitted that the lines of accountability and responsibility between the SQA and the Scottish Government were clear. In accordance with the Education (Scotland) Act 1996, the SQA is not a servant or agent of the Scottish Government, however it is accountable to both the Scottish Government and the Scottish Parliament.<sup>64</sup> This independence, and the lines of accountability and responsibility, are established for good reason and it is important that they are respected and adhered to by the Scottish Government in exercising its executive functions.

61. The Scottish Government learned from the experience of exam cancellation in 2020. At the time it respected the independence of judgement of the SQA which certificated exams as an external body. The Scottish Government recognised that, in the development of the ACM, approaches were taken which caused uncertainty and anxiety for learners. An apology was offered direct to pupils, and the Scottish Government took steps to rectify the situation. In addition, it commissioned the Priestley Review and accepted its findings.

62. As part of actions taken following the recommendations of the Priestley Review, the Scottish Government worked with partners to implement changes to the system, including establishing the National Qualifications Group which helped inform the SQA’s subsequent decision-making on delivery of the National Qualifications during the pandemic. This group included representatives from the Scottish Government, Education Scotland, teaching unions, colleges, independent schools, parents and learners. Moving forward, policy decisions were informed by wider stakeholder

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<sup>61</sup> INQ000588049\_2, Witness Statement of Jean Blair, at §9

<sup>62</sup> Transcript 8/187/4-18

<sup>63</sup> INQ000588143\_48, Witness Statement of John Swinney, at §177

<sup>64</sup> Education (Scotland) Act 1996, section 10, 11, and paragraph 1 of Schedule 1. The reference to “the Crown” in the latter provisions shall be read as including the Scottish Government in accordance with section 117 of the Scotland Act 1998.

engagement and public health advice. The National Qualifications Group continues to inform SQA decision-making, alongside wider engagement, research and evaluation work.

63. In December 2020, following consultation with young people to hear their views, the 2021 exam diet was cancelled.<sup>65</sup> It was announced that an ACM would be used, taking into account the Priestley recommendations. In developing that model, the SQA was able to take a more structured approach to engaging with learners and teaching unions. This was, in part, due to the earlier stage in the academic year when the decision to cancel exams was made. A technical consultation took place to allow practitioners to shape the modifications to National Courses in session 2020-21. While practitioners were the priority group for this technical consultation, in the interests of transparency it was open to the public and responses from learners were invited.<sup>66</sup> The SQA is currently being replaced by Qualifications Scotland in an education reform to take account of challenges following the pandemic and consolidate a change in practice and culture.

#### **Issue 5: Impact assessments**

64. The Scottish Government carried out numerous Child Rights and Wellbeing Impact Assessments (CRWIAs) during the pandemic. These have been prepared and published since 2015 in relation to decisions which have an impact on children and young people. From 16 July 2024, there has been a legal duty to publish a CRWIA in relation to most legislation and all decisions of a strategic nature relating to the rights and wellbeing of children.<sup>67</sup> Several Core Participants and witnesses have sought a recommendation from the Inquiry which requires such impact assessments to be carried out. Within its Module 2 report, the Inquiry has recommended the introduction of legislation, by the UK Government and Northern Ireland Executive, to place child rights impact assessments on a statutory footing. This has been established practice in Scotland since 2015 and a legal requirement since July 2024. During the pandemic, it was not always possible to carry out these impact assessments prospectively.

65. Professor Turner recognised that after the eye of the storm has passed it is important to review evidence and consider what has been learned and what can be done to

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<sup>65</sup> INQ000588143\_89, Witness Statement of John Swinney, at §339 to 341

<sup>66</sup> INQ000588049\_58, Witness Statement of Jean Blair, at §272 to §274

<sup>67</sup> United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, section 17

redress the harms which occurred.<sup>68</sup> This is what the Scottish Government did. A similar practice was adopted in Wales. As highlighted by the Former First Minister of Wales, the Rt Hon Mark Drakeford MS, this was not an attempt to “...retrofit a children's rights impact assessment to the decision we had made. That was not the purpose of it. The purpose was to learn lessons from it, to look back at the way those decisions had been made and ask ourselves: had we had the luxury of being able to conduct a full children's rights impact assessment at the time, what would we have learnt from that? So that we can then apply that to the children's rights impact assessment that we do hope to have alongside our next decision making”.<sup>69</sup> The Scottish Government agrees with this observation. Even where a CRWIA does not, or cannot, change the outcome of the decision, it is nonetheless beneficial as it can identify the harm that may be caused and identify mitigations that can be put in place.<sup>70</sup> The Scottish Government does not accept that, during the pandemic, CRWIAs were carried out too late and failed to look holistically at children's rights.<sup>71</sup>

66. In May 2020, a prospective impact assessment was carried out in relation to the decision to re-open schools and ELC settings in August 2020.<sup>72</sup> In July 2020 a CRWIA was carried out on the closure and re-opening of schools.<sup>73</sup> This was done both to learn lessons from what had already occurred and to assess prospectively, and mitigate, the impact of re-opening schools. It was only by understanding the impact of closing schools that the impact of re-opening could be properly assessed and mitigated. The two are inextricably linked. This CRWIA recognised both the general negative impact on the learning and wellbeing of children and young people of closure, and the differential impacts on vulnerable and at-risk groups. These impacts were at the forefront of the Scottish Government's consideration of the process of education recovery in 2020 and 2021.

67. CRWIAs were also carried out in March 2020 in relation to the Coronavirus (Scotland) Bill, in September 2020 in relation to the impact of Covid-19 restrictions on children and young people, and in December 2020 to assess retrospectively the impact of the Scottish Government's decision to use teacher estimates for the 2020 exam diet rather than the grades awarded under the SQA's Alternative Certification Model.

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<sup>68</sup> Transcript 7/90/20 – 7/91/7

<sup>69</sup> Transcript 15/156/2-15

<sup>70</sup> Transcript 16/19/8-14

<sup>71</sup> Transcript 16/18/9-20

<sup>72</sup> INQ000182758

<sup>73</sup> INQ000182889

## **Issue 6: Vulnerable children**

68. The Scottish Government took a holistic approach to the definition of vulnerable children. This was not just an issue of child protection or children from at-risk groups. The Scottish Government recognised that vulnerability may arise as a result of the pandemic and the pandemic response. The Scottish Government first provided guidance on this issue in March 2020 which defined vulnerable children in a broad way. The definition included children on the Child Protection Register, those who were looked after and those on the edge of care; children and young people affected by poverty and deprivation, including those in receipt of free school meals; and children and young people with complex additional support needs. It went on to elaborate that *“those working with children and young people will be best placed to identify those considered in need of support in order to continue to protect their well-being”* and that it *“continues to be the responsibility of the local authority to provide provision which ensures the care, protection and support that particular vulnerable children and young people need”*.<sup>74</sup>

69. In May 2020 the guidance was changed in response to stakeholder feedback and the categories were expanded to include families with loss of income, experiencing social isolation, or otherwise struggling because of the lockdown. The revised definition recognised that many children would be vulnerable as a result of the pandemic itself or the response.<sup>75</sup> Further guidance on the arrangements for return to school including for vulnerable children and keyworkers was introduced on 21 December 2020. This guidance included a broader definition of vulnerable children and young people than in the initial phase, due to improved understanding of impacts on children and young people.<sup>76</sup> This approach recognised that inequalities both deepened and widened during the pandemic.

70. These changes increased the number of children attending school during periods of lockdown. The number of vulnerable children attending schools increased over the pandemic. Professors McCluskey, Lewin and Van Herwegen report that the share of vulnerable children attending increased from 1.8% in April 2020 to 8.1% in June 2020.<sup>77</sup> The Scottish Government’s own estimates in January 2021 indicated that the trend continued throughout the pandemic, rising from around 3,000 vulnerable pupils

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<sup>74</sup> INQ000588143\_36, Witness Statement of John Swinney, at §124

<sup>75</sup> INQ000588143\_36, Witness Statement of John Swinney, at §132-134

<sup>76</sup> INQ000649083\_144, Witness Statement of DG Education and Justice, at §494

<sup>77</sup> INQ000588179

attending during the first lockdown to 18-19,000 vulnerable pupils attending during the second period of restrictions.<sup>78</sup>

71. The Scottish Government accepts, with the benefit of hindsight, that use of the word “vulnerable” had unintended consequences. Professor McCluskey told the Inquiry that some children did not want to be identified as vulnerable: *“The stigma of being identified as vulnerable... probably added to the complications”*.<sup>79</sup> She recognised that use of the term “vulnerable” was a genuine attempt to assist schools to understand their duties; it was sensible to emphasise that schools offered safety and that some children were at risk without that.<sup>80</sup> Nonetheless the low attendance rates at the start of the pandemic and the need to update the definition demonstrate that there is room for improvement. The Scottish Government accepts that, in a future pandemic, more neutral language would be preferable. As highlighted by Baroness Anne Longfield, the language around children who were a priority could have been much more positive.<sup>81</sup>
72. There is a balance to be struck between (1) providing clear guidance to ensure consistency and uniformity and avoid undermining the benefit of school closures and (2) the need for discretion and flexibility to ensure local decision-makers can do what is best for each individual child. Professor McCluskey highlighted the dangers of categorisation, which can lead to people being missed out.<sup>82</sup> As explained by Professor Whitty: *“There has to be some degree of uniformity across government or actually issues of unfairness start to arise... if you're going to differentiate, you have to be able to explain the logic and explain why”*.<sup>83</sup>
73. Exceptions to restrictions will always be required: *“there's only so far you can go before either you get policy incoherence or you actually start undermining the policy aim that you were trying to achieve in the first place”*.<sup>84</sup> The Scottish Government sought to balance these competing factors by providing a high-level national definition of vulnerable children but leaving the ultimate decision as to which children should attend school to local authorities. Whilst this may have led to regional variation, it was important to ensure that schools had the necessary flexibility to consider the needs of

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<sup>78</sup> INQ000588143\_107, Witness Statement of John Swinney, at §427

<sup>79</sup> Transcript 6/168/5-13

<sup>80</sup> Transcript 6/170/13-20

<sup>81</sup> Transcript 4/33/5-6

<sup>82</sup> Transcript 6/172/14-16

<sup>83</sup> Transcript 13/82/16-25

<sup>84</sup> Transcript 13/74/5-18

individual children. As explained by Mr Matthew Coffey of Ofsted: *“it’s a head teacher of a school that understands their pupils better than anybody else, understands the circumstances with which they live. They were likely to know their parents and all of those arrangements”*.<sup>85</sup>

### **Issue 7: Infection control and ventilation**

74. The Scottish Government has listened carefully to the evidence of Professor Catherine Noakes and Dr Shona Arora on infection control and ventilation. In late summer 2021, the expert Short Life Working Group for Ventilation was set up to provide advice and make recommendations to the Scottish Government on actions to improve ventilation. In October that year, the Scottish Government Covid Ventilation Short Life Working Group for Further Education (FE), Higher Education (HE) and Culturally and Linguistically Diverse learners recommended CO<sub>2</sub> monitoring as an effective method of ensuring adequate ventilation in multi-occupant campus settings, making them safer for students and staff. This addressed the need raised by the sector themselves through the Scottish Association of University Directors of Estates as well as trade union concerns about supporting clean air environments for staff and students.<sup>86</sup>
75. In 2021/22 colleges and universities were initially unable to access the Scottish Government’s Business Ventilation Fund. The identification of significant underspend of the Business Ventilation Fund in the final quarter of 2021/22 allowed for the prospective roll-out of CO<sub>2</sub> monitors to FE and HE institutions in that financial year. Ministers subsequently gave approval to explore the repurposing of the underspend. The 4,600 portable CO<sub>2</sub> monitors secured were agreed by Universities Scotland and Colleges Scotland as being their calculated requirement across all institutions up to a maximum of 100 per institution. These were provided through Advanced Procurement for Universities and Colleges and delivered across 46 HE and FE institutions at a cost of £811,116.<sup>87</sup>
76. The understanding of the role of ventilation and air cleaning in transmission of the virus evolved during the pandemic from March 2020 through to January 2022. Ventilation and good air quality remain essential for maintaining healthy learning environments in schools across Scotland. The Scottish Government acted as soon as was practicable to install CO<sub>2</sub> monitors in all learning, teaching and play spaces across

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<sup>85</sup> Transcript 5/10/3-7

<sup>86</sup> INQ000643935\_65, Witness Statement of Lifelong Learning and Skills Directorate, at §214

<sup>87</sup> INQ000643935\_65, Witness Statement of Lifelong Learning and Skills Directorate, at §215 to §217

Scotland. CO<sub>2</sub> monitors were a key part of the Scottish Government's response, supported by expert guidance and significant funding to local authorities.

77. Funding of £10 million was provided to improve ventilation in 2021, and a further £4.8 million was provided in 2022. Local authorities were allowed to use the funding for air cleaners but, at the time, the research was inconclusive on their effectiveness. Investment in school infrastructure remains a priority, and through the Scottish Government's £2 billion Learning Estate Investment Programme, schools in the worst condition are being replaced across the country.

### **Issue 8: Relaxing restrictions on outdoor spaces**

78. The Scottish Government agrees with Dr Delgado that we should involve children and young people in the design of research on mitigation measures or interventions.<sup>88</sup> As highlighted by Professor Turner "*It is always better to do things with people rather than to them.*"<sup>89</sup> The Scottish Government recognises that children and young people, for whom social connections are paramount, were arguably hardest hit by restrictions. Instead of attending school or early learning and childcare, they remained at home. Social distancing measures left them isolated. The Scottish Government has reflected on the impact of the pandemic on children and young people and since then has strengthened their rights by directly incorporating the UN Convention on the Rights of the Child (UNCRC) into domestic law, within the limits of devolved competence. This includes the right to be heard in article 12 of the UNCRC. This was done to deliver a proactive culture of everyday accountability for children's rights across public services in Scotland.

79. The Scottish Government recognised the distinct needs and rights of children when making policy decisions during the pandemic. As the detrimental impact of restrictions on children became clear, and understanding of the virus improved, the risk/benefit analysis changed. This led the Scottish Government to adopt a different approach to limits for children for social gatherings.

80. The Children's Rights Organisations stated "*Scotland, with a more established focus on children's rights, took practical measures to exempt children from some of the most draconian lockdown measures.*"<sup>90</sup> The Scottish Government was constantly

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<sup>88</sup> Transcript 2/162/4-14

<sup>89</sup> Transcript 7/75/14

<sup>90</sup> Transcript 16/62/6-9

concerned about the impact of Covid on the well-being of children, and that children needed to have access to interaction and engagement in family and friendship situations. It was concerned that children and young people were suffering significantly. It took a rights-based approach to all of these questions. At about the same time, the Scottish Government was preparing legislation to incorporate the UNCRC into domestic Scots law, so was considering that perspective as it considered these issues.

81. In Scotland, children under 12 did not count towards the six-person limit on outdoor gatherings. This reflected the Scottish Government's understanding of the importance of outdoor play, the limited role played by children in transmitting the virus, and the low risk of transmission outdoors. This was consistent with the Scottish Government's aim of reducing overall harm and the National Play Strategy which has been in place since 2013.
82. The National Play Strategy recognises that play supports children's social development, resilience, language, health, and wellbeing. A play vision statement and action plan, which builds on the 2013 Strategy, was published on 24 March 2025. The Scottish Government's vision for Scotland is that play is welcomed, celebrated and nurtured; and that every child is able to play across all stages and aspects of their life to support their social development, resilience, language and communication development, health, physical and mental wellbeing.
83. As explained by Professor Whitty, excluding children from the rule of six was a *"perfectly reasonable decision but it came at some level of cost in terms of potential transmission"*.<sup>91</sup> It is a question of weighing risk. The Scottish Government took the view that, given the relatively low risk of transmission, this was a cost that could be borne. Scotland has long-standing and well-established policies and frameworks in place to consider the interests of children such as the National Play Strategy, 'Getting it right for every child' (GIRFEC), Scotland's long standing, national commitment to provide all children and their families with the right support, at the right time, and an established practice of carrying out CRWIAs. In addition, during the pandemic, the Four Harms approach was adopted. These frameworks ensured that policymakers were able to carefully analyse and balance the risk of transmission with the risk of

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<sup>91</sup> Transcript 13/88/18-19

causing harm by continuing to restrict children's ability to interact socially with one another and with the important adults in their lives, such as grandparents.

#### **Issue 9: Policing of children and young people**

84. The Inquiry heard evidence from Mr Martin Hewitt CBE QPM on behalf of the National Police Chiefs' Council. He was asked about a lack of clarity in UK government guidance on outdoor play for children and how many children were prevented or discouraged from playing outside.<sup>92</sup> In answer, he acknowledged that the pandemic was not experienced in the same way by everybody.<sup>93</sup> In Scotland, Fixed Penalty Notices (FPNs) could be issued to persons aged 16-18 prior to the introduction of the Coronavirus (No.2) (Scotland) Act on 27 May 2020 when the age limit was raised to 18, in line with England and Wales. This demonstrated the Scottish Parliament's willingness to listen and act on concerns about the equality impacts of FPNs, following representations made by the Children & Young People's Commissioner for Scotland.

#### **Issue 10: Planning for the future**

85. The Scottish Government has a national approach and framework for children in the form of GIRFEC. This rights-based, holistic approach lies at the heart of all policies impacting children and has been strengthened by the duties under the UNCRC (Incorporation) (Scotland) Act 2024. Considering the rights and interests of children through the GIRFEC framework is an "*established ethos within Scottish education*".<sup>94</sup> It is part of the decision-making culture. As such, in Scotland, there are already meaningful and inclusive participatory structures for children and young people at a local, regional, and national level.

86. As explained by Mr Swinney, the needs of disabled children or children with other support needs are individualised through the GIRFEC framework.<sup>95</sup> This was also reflected in the evidence of Ms Amanda Stocks, headteacher, of Stirling Inclusion Services who explained that the GIRFEC resource group is used to consider whether a child needs more support than can be provided in a mainstream school.<sup>96</sup> In the view of Ms Nuala Toman from Disabled People's Organisations, Scotland has better measures to identify and assess special educational needs than other parts of the

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<sup>92</sup> Transcript 13/197/1-7

<sup>93</sup> Transcript 13/198/2-9

<sup>94</sup> Transcript 8/157/7-20

<sup>95</sup> Transcript 8/18/24 – 8/19/3

<sup>96</sup> Transcript 6/5/12-23

UK.<sup>97</sup> The GIRFEC framework also ensured that, prior to the widening of the definition of vulnerable children, children in vulnerable circumstances received appropriate help. The change to the definition was designed to bring more consistency to what had become established practice on the ground.<sup>98</sup>

87. Direct incorporation of the UNCRC by the UK Government has been recommended by several witnesses and Core Participants. As highlighted by the Children's Commissioner for Scotland there are significant pieces of legislation that are out of the scope of the UNCRC (Incorporation) (Scotland) Act 2024 (the 2024 Act).<sup>99</sup> It applies only to functions that are both (1) within the legislative competence of the Scottish Parliament and (2) conferred by an Act of the Scottish Parliament or a Scottish statutory instrument (as defined in sections 6(2)(b)(ii) and (iii) of the 2024 Act). The Scottish Parliament passed the UNCRC (Incorporation) Scotland Bill on 16 March 2021. The Children's Commissioner for Scotland expressed her opinion to the Inquiry that, had the Bill received Royal Assent and been enacted during the pandemic, some of the concerns highlighted in her statement might not have occurred, or might not have occurred to the same extent.<sup>100</sup> The Bill was not enacted during the relevant period. The UK Government referred the question of whether certain provisions of the Bill were within the legislative competence of the Scottish Parliament to the Supreme Court.<sup>101</sup> As a result, implementation was delayed.

88. Following the Supreme Court's judgment, the incorporation of the UNCRC was not as extensive as originally envisaged. The Supreme Court's judgment meant that the duty to act in a way which is compatible with the UNCRC, and the courts' remedial powers, could not apply to statutory provisions in an Act of the Westminster Parliament, even in devolved areas. An amended Bill was approved by the Scottish Parliament on 7 December 2023, it received Royal Assent in January 2024, and the key provisions commenced on 16 July 2024. The Scottish Government cannot incorporate fully the UNCRC into Scots law alone. Legislation from the Westminster Parliament would be necessary. The Scottish Government is able and willing to assist the UK Government to facilitate the introduction of legislation to incorporate fully the UNCRC into Scots

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<sup>97</sup> Transcript 3/7/1-3

<sup>98</sup> Transcript 8/20/8-10

<sup>99</sup> Transcript 16/6/2-7 & 16/52/16-17

<sup>100</sup> Transcript 16/5/17-22

<sup>101</sup> *Reference by the Attorney General and the Advocate General for Scotland - United Nations Convention on the Rights of the Child (Incorporation) (Scotland)* [2021] UKSC 42

law. This would resolve the issues currently faced in Scotland in relation to the scope of the 2024 Act.

89. The Children’s Commissioners invited the Inquiry to recommend the imposition of a statutory duty to consult meaningfully with Commissioners in any future pandemic, and to give due regard to their views and to respond to them.<sup>102</sup> The Scottish Government supports the general principle which underpins this recommendation. The views of children should be considered when making decisions which impact them. In any future pandemic, the Scottish Government would be required to take these views into account in accordance with article 12 of the UNCRC (right of the child to be heard) and section 6 of the 2024 Act (Acts of public authorities to be compatible with the UNCRC requirements).
90. Nonetheless, as highlighted by Counsel to the Inquiry, a statutory duty to consult the Children’s Commissioner would need to be sufficiently flexible to account for the fast-paced decision-making required during a pandemic or other emergency situation.<sup>103</sup> In practice, it will not always be possible to consult prior to decisions being made.
91. Section 17(4) of the 2024 Act requires the Scottish Government to prepare and publish a CRWIA in relation to strategies, policies or criteria to remove or restrict temporarily in-person delivery of education provision in schools. This provides a further safeguard in the event of a future pandemic.
92. The Inquiry has been asked by several Core Participants to recommend that a Cabinet Minister for Children is appointed to ensure that the interests of children are represented at the highest levels of government. Scotland had a Minister for Children throughout the relevant period, albeit this was not a Cabinet level Minister. The Minister for Children and Young People has supported the Cabinet Secretary for Education and Skills since 2007. The current title for this role is Minister for Children, Young People and The Promise. “The Promise” refers to the Scottish Government’s commitment to implement the Independent Care Review by 2030 and its promise that all Scotland’s children and young people will grow up loved, safe and respected so they can realise their full potential. Children’s issues are strongly represented by the Cabinet Secretary for Education.

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<sup>102</sup> Transcript 16/43/24 – 16/45/13

<sup>103</sup> Transcript 16/45/2-7

93. During the pandemic the Scottish Government recognised the importance of being able to hear from children and young people directly. A representative from the Scottish Youth Parliament was on CERG. He played a key role in CERG discussions and ensured that the views of children and young people were heard. In addition, the Scottish Cabinet meets on an annual basis with representatives of the Children's Parliament and the Scottish Youth Parliament. These meetings continued during the pandemic. In March and April 2020, the First Minister, Nicola Sturgeon, answered video questions from children and young people about Covid-19 on three separate occasions. The videos were released on the Young Scot YouTube channel and shared across the Scottish Government, including Parent Club, and relevant partner social media channels. A further question and answer session with Professor Jason Leitch CBE, National Clinical Director, took place in November 2020. Questions for this session were submitted by young people.
94. Under the 2024 Act, the Scottish Government is required to publish a Children's Rights Scheme, which sets out the arrangements that they have made, or propose to make, in order to ensure that they comply with the compatibility duty in section 6 of the Act and secure better or further effect the rights of children. This must include arrangements to ensure that children are able to participate in the making of decisions that affect them with access to such support and representation as they require to do so. The Children's Rights Scheme is to be laid before the Scottish Parliament in November 2025. This will help to ensure that, when the Scottish Government takes decisions in response to any future pandemic, it has a better awareness of what is important to children and young people and well-established processes for engaging them on strategic decisions relevant to them.
95. The Scottish Government wishes policy, law and decision making to respect children's rights. This includes the following children's rights: to have their best interest as a primary consideration; to express their views and for these views to be given due weight; to life, survival and development; and to the highest possible attainable standard of health.
96. The Scottish Government recognises the importance of outdoor learning and agrees with COSLA that the provision of outdoor learning needs to work for local conditions, local children and young people. Provision for outdoor learning in the Highlands of Scotland will be entirely different to that in the centre of Glasgow. The Scottish Government accepts that remote education has a place in future options for educating

children and young people outside its role as an emergency measure, or indeed as part of an emergency measure, as a complement to face-to-face learning.

### **Conclusion**

97. The Scottish Government has listened to all the Module 8 hearings and recognises that there are lessons to be learned. It welcomes the scrutiny of the Inquiry and recommendations from the Chair in order to mitigate the impact of any future pandemic on children and young people, to the extent that it is possible to do so. It accepts the importance of engagement with all groups across society in preparation for the next pandemic and tackling health inequalities, including child poverty. It also recognises that more could have been done to listen to the voices of children and young people during the pandemic, including those groups who are seldom heard. Following incorporation of the UNCRC into Scots law, within devolved competence, the Scottish Government is committed to ensuring that the voices of children and young people are central to decision-making on matters affecting them.

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