

David Richards OBE

Cyfarwyddwr Priodoldeb a Moeseg
Director of Propriety and Ethics



Llywodraeth Cymru
Welsh Government

22 September 2022

Dear Solicitor to the Inquiry,

Application to be a core participant in Module 2 and 2B.

1. This is the application of the Welsh Government (“**WG**”), made under r. 5 of the Inquiry Rules 2006 (“**the Rules**”) and in accordance with the Core Participant Protocol (dated 21 July 2022) (“**the Protocol**”), to be a core participant (“**CP**”) in Module 2 and related Module 2B. For the purposes of r. 5(1) of the Rules, WG consents to being designated a CP in Module 2 and 2B while maintaining a watching brief in respect of Modules 2A and 2C.
2. I am authorised by the First Minister of Wales to make this application on behalf of, and to give the consent of, WG.

Scope of Module 2

3. The scope of Module 2 has been set out in the Opening Statement and has been supplemented by provisional outlines of scope in respect of Module 2, 2A, 2B and 2C.

The application in respect of Module 2

4. The interaction between WG and the UK government along with the other devolved governments will be relevant to all elements of Module 2. There are relationships and interconnected arrangements between each administration which will lend itself to evidence from each nation.
 - 4.1 The WG has a material interest in common sources of information to include, but not limited to, medical and scientific evidence that emerged and the communication of that material. There is also common interest in the divergence of decision making and communication of those decision.
 - 4.2 The Coronavirus Act 2020 was enacted following cooperation between the four nations.

The application in respect of Module 2B

Core political and administrative decision making:

5. Since devolution in 1999, the Welsh legislature has been legislating on all aspects of matters within its legislative competence. The legislature has been supported by the WG which is the devolved executive for Wales.



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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding

- 5.1 Section 45 of the Government of Wales Act 2006 provides that the Welsh Government consist of the First Minister, Welsh Ministers, Deputy Welsh Ministers, and the Counsel General.
- 5.2 The Cabinet is the principal decision-making body for the WG and met frequently during the early weeks and months of the pandemic.
- 5.3 The Welsh Cabinet is supported by the Permanent Secretary's group and Director Generals.
- 5.4 The Welsh Ministers, supported by the WG exercised its powers to lead, develop and co-ordinate the national response to the pandemic. This is evidenced by the extensive catalogue of Welsh legislation, strategic oversight and guidance that emerged during the pandemic.

The structure of the WG and the key bodies as referred to in 2B (1):

6. The governance structure of the WG engaged in its response to the pandemic included but was not limited to the Cabinet, Executive Committee to include a committee dedicated to the pandemic, supported by the Covid Strategy Group, the Chief Scientific Officer, the Chief Medical Officer and the Technical Advisory Group & Cell.
- 6.1 The WG's Director General for Health and Social Services ("DG HSS") is also the "Chief Executive of the Welsh NHS. The DG HSS engaged proactively Chief Executives for local health boards and NHS trusts during the pandemic.
- 6.2 The WG can address the relationship and communication with the UK Government, other devolved governments, and local authorities in Wales.

The WG's initial understanding and response as referred to in 2B (2):

7. The FM and the MHSS (not always together) attended multiple COBR meetings (Chaired either by the Prime Minister or the Secretary of State for Health) from late January 2020 to April 2020.
- 7.1 WG was represented at UK Government's Scientific Advisory Group (SAGE) from mid-Feb 2020.
- 7.2 There was Chief Medical Officer interaction across the governments in the UK.
- 7.3 In the early months of the pandemic, the WG took extensive measures to protect the wellbeing of those in Wales, including but not limited to closing schools, adopting a comprehensive shielding programme, the introduction of a comprehensive testing programme; and also the exercise of powers conferred on the Welsh Ministers under the Public Health (Control of Diseases) Act 1984 and made by example, the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 which came into force on the 26 March 2020.

Decision making in respect of non-pharmaceutical interventions as set out in 2B (3):

8. The WM exercised executive or legislative functions where interventions were deemed necessary.
- 8.1 The WG decision making was informed by the use of data, which is addressed at 2B (4) below.

- 8.2 *'Leading Wales out of the coronavirus pandemic: a framework for recovery'* was published by the WG on the 24th April 2020. The framework was designed to lead Wales out of the coronavirus crisis in a way that kept everyone safe and revitalised the economy in Wales.
- 8.3 In respect of the funding, the WG receives a budget allocation from the UK Government which is determined by the spending review and any subsequent adjustments. In addition to the block grant, part of the Welsh budget is raised from devolved taxes. Additional funding allocation was made from the HM Treasury to the WG, the adequacy and timeliness of the funding influenced, on occasions, the WG response to the pandemic.
- 8.4 The WG established a Star Chamber and its purpose was to oversee and co-ordinate the WG's fiscal response to the pandemic.

Access to and use in decision-making of data as set out in 2B (4):

9. The WG was represented at the UK Government's SAGE from mid-February 2020.
- 9.1 The WG established the Technical Advisory Group ("TAG") and Welsh Government Technical Advisory Cell ("TAC").
- 9.2 TAG was established in March 2020 with a remit to ensure that scientific and technical information and advice, including advice coming from SAGE, was developed and interpreted in a Welsh context.
- 9.3 TAG was supported by a number of subgroups, each responsible for specific focus area, to include policy modelling; international, research; socio-economic harms; virology and testing; children and schools; risk communication and behavioural insights and environmental science. Each group is made of external experts from academia, policy and members of TAC.
- 9.4 TAC was established by the Welsh Chief Scientific Officer for Health in February 2020. TAC provided coordination of scientific and technical advice to support Welsh Government decision makers during pandemic.

Public Health Communications in Wales as set out in 2B (5):

10. Healthcare has been a devolved function since 1999.
- 10.1 The WG has overarching responsibility for the NHS in Wales and has exercised its powers to lead, develop and co-ordinate public health since the function was devolved, this is achieved via the 7 Local Health Boards and 4 NHS Trusts which are directly accountable to the Minister for the Health and Social Services.
- 10.2 In the early months of the pandemic, Public Health Wales, which is 1 of the NHS trusts in Wales worked in parallel with the WG to inform the Welsh public.
- 10.3 As the pandemic escalated, the First Minister and Cabinet took a more prominent role in communications with press conferences and interviews.

10.4 "Keep Wales Safe" messaging was adopted by the WG to ensure targeted messaging relating to measures adopted specifically in Wales.

10.5 The WG can also advise on the impact of any alleged breaches of rules and standards by Welsh Ministers, officials and advisors.

Public health and coronavirus legislation as set out in 2B (6);

11. Healthcare has been a devolved function since 1999.

11.1 A comprehensive body of legislation both primary and secondary was executed in Wales in response to the pandemic, including the use of powers under the Public Health (Control of Diseases) Act 1984 Act and the Coronavirus Act 2020. Decisions about the necessity for and proportionality of this legislation were made by Welsh Ministers.

Conclusion

12. For the reasons set out above, for the purposes of r. 5(2)(a) of the Rules, the WG has a direct and significant role in the matters to be investigated in Module 2 and 2B; under r. 5(2)(b), it has a significant interest in all aspects of the matters to which Module 2 and 2B relates and, as to r. 5(2)(c), given its statutory powers and responsibilities within devolved competence specifically those in the health arena, the WG may be the subject of explicit or significant criticism during Module 2 and 2B and/or in the Inquiry report (interim, modular and sub modular or otherwise). The WG, therefore, asks to be a CP in Module 2 and 2B. Due to the interaction across all elements of module 2, the WG will keep a watching brief in respect of Module 2A and 2C.

Other matters

13. Given the WG's executive responsibility and its role as strategic and legislative lead for health and social care, it has not explored making an application to be a core participant with another person or organisation. The WG confirms that it is legally represented. As well as being advised by its in-house Legal Services Department it has also retained Browne Jacobson LLP (Stephanie McGarry) as its solicitors.

14. If you require any further information or clarification about this application, please do not hesitate to make contact.

Yours sincerely,

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