

## **Annex G: Statement on provision of information to UK Covid-19 Inquiry.**

Presiding Officer, the loss and trauma experienced by people across Scotland throughout the Covid-19 pandemic cannot be overstated.

We remember all those who have lost their lives or had them irrevocably changed. It is my hope that, through the Scottish Government's cooperation with both the UK and Scottish Covid-19 public inquiries, we help provide some answers and relief.

Presiding Officer, I know the chamber will appreciate that we would not normally make a statement regarding engagement with Public Inquiries while their proceedings are live. However, as Minister responsible for Covid-19 inquiries, I am making this statement to address issues raised by the UK Inquiry at the Preliminary Hearing on 26<sup>th</sup> October, and to give our reassurances on our commitment to a full response.

In order to ensure the Inquiries can take forward their necessary work without undue speculation, I hope the chamber will also appreciate that we do not intend to provide a running commentary on with the work of either inquiry.

The Scottish Government established the first public inquiry in the UK to examine the response to Covid-19 in December 2021, ahead of the UK Government commencing the UK wide public inquiry.

It is important to note that both inquiries have made all their requests to witnesses in confidence, and those requests are not public.

All those receiving requests, including Scottish Government, have been told by the inquiries not to share their content. It is entirely up to – and wholly a matter for – the independent inquiry chairs to determine, where appropriate, whether to publish the material they receive.

The Scottish Government is obliged to comply with this requirement and as such I will not, and cannot, provide precise details on any of the requests that the Scottish Government has received to date, including specific information on what has been asked of individuals who have received requests from the inquiries. Nor can I discuss in detail what material individuals have or have not provided.

Let me say from the offset Presiding Officer, where there has been any lack of clarity from the Scottish Government about the material to be provided to the inquiries, I apologise to the families bereaved by Covid for any distress caused – that certainly was not our intention.

The Government will reach out to the representatives of Scottish Covid-19 Bereaved Families for Justice and offer a meeting to provide further reassurances where we can.

What I can assure those families, and this Chamber is that the Scottish Government has, and will work tirelessly to provide the UK Inquiry with the materials it has requested. The material provided to the inquiry to date includes emails, messages, submissions, and advice to Ministers, and papers from key decision-making meetings - including the Scottish Cabinet. In total more than nineteen thousand (19,000) documents have already been provided to the UK Inquiry, and this figure continues to grow.

The initial requests received from the UK Inquiry focused on decision-making. As we have stated previously, it is not the culture within Scottish Government to routinely use systems such as WhatsApp for decision-making. Decisions are routinely made in minuted meetings, or through formal submissions to Ministers. All relevant records of both of these have been provided to both Inquiries already.

The UK Inquiry asked in June for summaries of all WhatsApp and similar groups related to coordination, logistics and day-to-day communication - greatly expanding the scope of what the Scottish Government needed to collate and process accordingly. This request was followed in September by a request for the actual messages exchanged within these groups.

In examining the messages collated, it was clear that a number of them were of a particularly personal nature, including photos of individuals' children and personal medical details. In order to reconcile our obligations as data controller for the contents of the messages with our desire to cooperate fully with the Inquiry, the Scottish Government wrote to the UK Inquiry on 5<sup>th</sup> October requesting a Section 21 notice, to provide the necessary legal basis for providing the information within the messages.

The Scottish Government received this Section 21 notice yesterday, and I can confirm that work is well underway to fully comply in accordance with the timetable set by the UK Inquiry. This will mean that all requested messages held will be shared, in full and unredacted, by 6 November.

In addition to the hundreds of messages already handed over to the UK Inquiry, this notice will allow us to share over fourteen thousand (14,000), mainly WhatsApp, messages from various groups and individuals over the period of the pandemic, mostly concerning routine coordination of work and meetings by officials. I can confirm that messages from Ministers and former Ministers are included.

In instances where it appears as though messages may not be available, including through deletion in line with civil service policies on data management and retention, advice has been sought as to whether device owners or a third party are able to recover material.

We will, of course, continue to fully cooperate with both inquiries and will share any additional messages, should more become available or further material be requested.

Following questions in Parliament last week, I would also like to highlight that the First Minister has asked the Permanent Secretary to ensure that all steps are being taken to meet the Inquiry's requests and for the Solicitor General to satisfy herself that the Scottish Government has met all its legal obligations. It will be for individuals to explain to the inquiries any actions they have taken in relation to records retention.

As the First Minister recently stated, should either Covid inquiry want more information, then we expect every Minister, past and present, every government official and clinical adviser to comply.

I can confirm that the First Minister will, when submitting his final statement for Module 2A in the coming days, hand over WhatsApp messages, unredacted to the Inquiry.

Presiding Officer, I would now like to offer some insight and reassurance regarding the handling and retention of records, including but not limited to informal communications, by the Scottish Government.

The Scottish Government has clear Records Management Policy, including transcribing and storing salient information from informal communications, such as evidence of decision-making, to a centralised record system.

The Scottish Government's duty to create and retain records has remained consistent throughout the period looked at by the inquiries and we have complied with that. The Scottish Government has maintained a detailed record and evidence of key decisions taken during the pandemic. Our policies fully comply with our legislative obligations under the Public Records (Scotland) Act 2011 and other legal obligations.

The Scottish Government's Records Management Policy makes clear what must be recorded in the official record, as it is not practical, cost-effective or necessary for any organisation to retain every single exchange that everyone working within that organisation creates.

To be crystal clear, there is not and never has been a need for material without business value to be retained as part of the corporate record. Colleagues exchanging pleasantries, chatting electronically about inconsequential or personal matters while working from home during lockdown, should not be retained.

No government, no organisation of any size routinely retains that material because it has no business use. It should also be noted that there are clear legal requirements **not** to retain data – and particularly personal data - for which there is no legitimate purpose.

These legal requirements are statutory and UK wide.

Prior to the development of a dedicated mobile messaging policy in November 2021, the retention of mobile messages was covered in the Scottish Government Records Management Policy. The records management policy continues to apply to all records.

The guidance has always been clear that regardless of the source medium, information relevant to the corporate record must be saved. Irrelevant, inconsequential material should not.

The mobile messaging policy, drafted by Civil Servants, is intended to ensure responsible and effective use of messaging applications. It is consistent with and supplements the established records management policy.

The policy covers a range of applications used on mobile devices, including, but not limited to WhatsApp.



The policy does not prohibit the use of messaging applications but requires people to consider the benefits and risks of using these apps, and to ensure that any usage is compliant with records management responsibilities and data protection requirements.

This policy encourages consideration of security and privacy when using mobile messaging apps, including whether the application allows for the automatic deletion of messages after a set period, to address the risk of messages being misused if a mobile device is lost or compromised.

Let me be clear, however, that contrary to some reports, there is not and has not been a requirement for any official, let alone Ministers, to auto-delete messages without ensuring that relevant information from them is transcribed and saved appropriately first.

The Scottish Inquiry wrote to the Scottish Government's Permanent Secretary on 5 August 2022 requesting that all material of potential relevance to the inquiry be retained.

The UK Inquiry, to date, has not written to the Scottish Government with a specific request for record retention, however, the UK Government wrote to permanent secretaries in each devolved administration in June 2021, February 2022 and October 2022, asking that material of **potential relevance** to the Inquiry should not be destroyed.

These requests were cascaded throughout Scottish Government and the significance and importance of storing material of potential relevance was made known to all relevant staff, as was the instruction that this material should be saved on the official record.

For the avoidance of any doubt, the Scottish Government has consistently acted within line with its records management policies and relevant legal obligations with regards to the collating and storing of corporate information.

Presiding Officer, before closing, I would like to note my gratitude to those working in the UK and Scottish Covid-19 Inquiries, I am conscious of both the immense responsibility they hold and the enormity of the tasks they face in understanding and distilling the events of the pandemic and the lessons that can be taken away.

We all stand to benefit from the work they take forward on our behalf and I am pleased with the constructive relationship that has developed between both inquiries and Scottish Government officials, including in the context of challenging deadlines and detailed scrutiny.

I am happy to reiterate the Scottish Government's pledge to continue the highest standard of cooperation already established with both public inquiries. Those affected by the pandemic, particularly those who bore some form of loss, have placed a great deal of trust in the Scottish Government, not just to take on the challenges that Covid-19 posed, but also to be open and accountable about our performance. That trust is of the utmost importance to the Scottish Government, and we will continue to work to make sure that we are acting accordingly.

Thank you, Presiding Officer, I am now happy to take questions.