



DPEA CORONAVIRUS (COVID-19) GUIDANCE

Updated February 2022

This is the 15th DPEA guidance note setting out how we intend to continue progressing our work during pandemic restrictions.

This update is based on wider Scottish Government guidance contained within [Coronavirus \(COVID-19\) update: First Minister's statement – 25 January 2022](#), [Coronavirus \(COVID-19\): staying safe and protecting others](#).

1. Overall position

The vast majority of DPEA work is carried out through written representations. During Covid-19 restrictions, DPEA and appointed Reporters aim to keep casework and all other DPEA work progressing. In this regard DPEA thanks those involved in the cases we handle for showing flexibility and innovation in devising new ways of working to allow cases to progress.

The First Minister's statement of 25 January sets out the following matters relevant to DPEA operations:

- instead of recommending home working whenever practical, new guidance will pave the way for a phased return to the office;
- from Monday 31st January, employers should consider implementing hybrid working – following appropriate guidance – with workers spending some time in the office and some time at home;
- Scottish Government does not expect to see a wholesale return to the office – indeed, the level of infection, though falling, remains high. A mass return at this stage is likely to be counter-productive and likely to set progress back.

Coronavirus (COVID-19): staying safe and protecting others (updated 31 January) advises that:

- there are no limits on the number of people or households that can meet at home and in public places;
- all businesses and venues can open. Many businesses have already taken steps to help reduce the spread of COVID-19, and we would advise this to continue. This includes things like: enhanced cleaning, physical distancing measures such as screens, processes for managing outbreaks and improved ventilation

In addition, Scottish Government staff have been advised that measures requiring colleagues to work from home, unless they have a critical business or wellbeing need to come into a workplace, will be relaxed from 1 February. This signals the start of a

transition to hybrid working, subject to 1 metre physical distancing and the wearing of face coverings when not seated.

Taking all of these considerations into account, DPEA now intends to return gradually to in-person hearings and inquiries where those are considered to be necessary. This gradual return will be consistent with the considerations set out in the bullet points above, and subject to 1 metre physical distancing. Such in-person events will entail appropriate risk assessment.

Our office in Falkirk remains open with a soft introduction of hybrid working from 1 February. Email communication with the Case Support Team remains in place. Please continue to use the usual phone numbers when contacting us.

2. Experience to date

Site inspections have been carried out virtually; reporters have used site photographs, video evidence and google earth to assess the merits of developments; and drone footage has also been used.

Pre-examination meetings, hearings and inquiries have been held via audio and video conference. Many of the lessons we have learned during this time have demonstrated positive benefits and we intend to weave these innovations into our ways of working beyond the pandemic.

It has been demonstrated that cross-examination can be conducted virtually, but shorter sitting days with more short breaks is desirable. We have also had positive feedback from unrepresented parties, who have found virtual participation to be more convenient and less daunting than appearing in-person.

3. Illness of Reporters and participants

If the appointed Reporter (as a sole appointee) thinks that they might have COVID-19 or if they have been in close contact with someone with COVID-19 (again subject to self-isolation), a decision may be made to sist proceedings for a short period. Where more than one Reporter is appointed in a particular case, a decision on a similar sist will depend on the circumstances, such as the ability of other Reporter(s) to keep the case going procedurally or whether any planned oral procedure is imminent.

Where any party or any key employee of any party (or their agent or representative) is subject to similar restrictions, we would be grateful if DPEA could be alerted, especially if an impact is anticipated on their ability to participate or pursue their interest in the proceedings effectively. This is of course subject to, and respectful of, medical confidentiality of any affected person.

4. Site visits

Reporters are now authorised to travel for accompanied and unaccompanied site inspections where it is safe to do so. Overnight stops are permitted. All parties to an appeal are entitled, by virtue of the Appeal Regulations, to attend any such

accompanied site visits. We would request, however, that attendance is kept to a minimum to reduce the risk associated with gathering. Site visits – even unaccompanied – will not take place where they would involve or necessitate access to the inside of buildings which are, at the time of the visit, subject to specific restrictions. This will generally mean that internal site inspections of occupied dwellings can take place, subject to minimal numbers attending and with the agreement of the householder.

5. Pre-examination meetings, Inquiries and Hearings

There will now be a gradual resumption of some in-person events. Events already planned around virtual procedure will continue to be held virtually. For events yet to be arranged, reporters and caseworkers will consider, on a case-by-case basis, whether there would be a clear advantage in those being held in-person. Those are likely to be cases with wider public involvement, where unrepresented parties wish to give evidence in-person, or where broadband connections would preclude participating in or viewing the event.

There remains a need for DPEA to be mindful of the personal circumstances of reporters and administrative staff in asking them to attend in-person events whilst the pandemic is ongoing. Pandemic-related requirements also place additional staffing requirements on DPEA in supporting in-person events. Therefore for the time being events involving solely or largely professional advocates and witnesses are much less likely to justify an in-person format.

We will endeavour to webcast proceedings to ensure that proceedings are able to be observed remotely. No party who wishes to give evidence will be precluded from doing so.

It is essential that virtual and in-person events comply with any physical distancing, hygiene and other requirements in force at the time. Reporters will enforce these requirements. Failure to comply will cause the Reporter to suspend the proceedings and may also be regarded as unreasonable conduct for the purposes of expenses claims.

6. Guidance for those participating in Site Visits, Pre-examination meetings, Hearings and Inquiries

Whether participating in-person or virtually, please:

- ensure that any physical distancing guidance is respected and refer to the latest NHS Scotland guidance shortly before such participation so that you have the most up to date information on the risks and on how to avoid catching or spreading coronavirus. This will include the wearing of face coverings when moving around within buildings; **the use of Lateral Flow Testing before attendance is also strongly encouraged;** and
- check with the local planning authority or with the DPEA case officer that the procedure is going ahead before travelling to any location in order to participate.

7. Looking beyond pandemic restrictions: a future operating model for DPEA

Remaining constraints will continue for now to affect DPEA operations, particularly its public interface with appeal parties and other stakeholders. DPEA has, however, started work on how the service delivery innovations necessitated by Covid restrictions can be adapted into a future operating model. For example, there have been clear case management, efficiency and carbon-emission gains arising from the introduction of virtual meetings.

Some participants have found virtual participation in hearings and inquiries more convenient and less daunting. We think it likely that a future approach will entail a mix of in-person, virtual and blended events, depending on the individual circumstances of each case. DPEA will consult with its Stakeholder Group with the intention of capturing these innovations for the longer term in a DPEA Guidance Note.