

**CORONAVIRUS (COVID-19)
DPEA OPERATIONS AND GUIDANCE ON SITE VISITS,
PEM's, HEARINGS AND INQUIRIES DURING PHASE 3 OF THE ROUTE MAP TO
EXIT RESTRICTIONS DESIGNED TO SUPPRESS THE CORONAVIRUS**

UPDATE 14 July 2020

This is the seventh DPEA guidance Note setting out how we intend to progress our work during this period. This guidance is based on the guidance contained within [Coronavirus \(COVID-19\) Phase 3: Scotland's route map update](#) and the Chief Planner's letter of 29 May which can be found at <https://www.gov.scot/publications/coronavirus-covid-19---planning-procedures---chief-planner-letter-may-2020/>

The vast majority of DPEA work is carried out by or through written representations. During Covid-19 restrictions, DPEA and appointed Reporters are seeking, as far as possible, to keep casework and all other DPEA work progressing. In this regard DPEA would like to put on record our thanks to those involved in the cases we handle for showing a degree of flexibility and innovation when it came to devising new ways of working to allow work to progress. Site inspections have been carried out virtually; reporters have used site photographs and google earth to assess the merits of developments; and drone footage has also been used. Oral sessions have been held via audio and video conference. Many of the lessons we have learned during this time have demonstrated positive benefits and it is important that we keep hold of these ideas and weave these into our ways of working going forward.

The Scottish Government guidance covering Phase 3 sets out that remote working will remain the default position for those who can. In practice this means that the majority of DPEA staff will continue to work from home and keep travel to a minimum. Our office in Falkirk will be open with only a skeleton staffing complement in place to accept deliveries and carry out functions that cannot be done at home. Email communication with the Case Support Team remains in place. Please continue to use the usual phone numbers when needing to contact us.

Illness of Reporters and participants

If the appointed Reporter (as a sole appointee) thinks that he or she might have COVID-19 or if he or she has been in close contact with someone with COVID-19 (again subject to self-isolation), a decision may be made to sist those 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.

DPEA will ensure that medically confidential information divulged for that reason is processed in a way and for these purposes consistent with GDPR.

Site visits

During Phase 3 DPEA may seek parties' views on whether a site visit is essential or whether there are alternative ways the reporter can obtain the information that would normally be obtained from a site visit such as photographs, virtual site visits or drone footage etc. DPEA will also give consideration to the use of technology that would allow a virtual site inspection to take place if the appointed reporter is unable to visit the site.

Phase 3 allows for the re-opening of visitor accommodation. In cases where a reporter is physically required to visit the site, they will no longer be constrained to visiting sites which can be reached there and back in the same day. This should allow for a fuller range of site visits to be undertaken, with a consequent reduction in the number of cases in sist. Whilst the default position will remain that, if possible, the site visit will be carried out on an unaccompanied basis, DPEA will carry out accompanied site visits where the circumstances of the case require it and the reporter is satisfied that it can be undertaken safely. Parties attending any such accompanied site visits will be required to ensure physical distancing is adhered to at all times. If parties are not complying with this requirement the reporter will suspend the site visit.

Site visits – even unaccompanied – will not normally take place when they will involve or necessitate access to the inside of buildings which are, at the time of the visit, in use as a residence. In any case where it is essential to see the inside of a home, and that cannot be done satisfactorily by virtual means, in-person visits will comply at all times with Scottish Government guidelines on numbers participating and with physical distancing and hygiene safeguards. This will include the wearing of face coverings.

Visits requiring access to nursing or care homes or other locations likely to involve the presence of elderly persons or persons with underlying health conditions will not normally be undertaken. Any such visits would only be undertaken if DPEA senior management is satisfied that an in-person visit is essential and that relevant physical distancing and other measures would be strictly followed.

We recognise that this may have the effect of requiring DPEA to continue the need to postpone some site visits during Phase 3.

Parties are reminded that the purpose of a site visit is simply to see the site and representations would not be able to be made, even had the reporter been accompanied. That rule will be strictly applied if a party is present at an otherwise unaccompanied site visit in any of the circumstances below:

- where permission and assistance is required to enter onto private land or into buildings (only permissible where not used as a residence – see above). In such a case (such as to hand over keys to land), the only contact to be made will be to arrange or facilitate access. The person doing so should have no role in the matter before the reporter, where that is possible. If no one is available to give access to the reporter, then please advise the case officer as soon as possible. Where such contact is needed, precautions in strict accordance with SG guidance on distancing and hygiene measures to minimise the risk of spread through handling such keys must be respected;
- where contact is needed because internal access is required to buildings (again only where not used as a residence) and/or in order to ensure the health and safety of the Reporter while on site (for example in an unsafe building). In such cases, arrangements may be possible in discussion with the case officer, subject to SG guidance and to precautions as previously advised being respected for health and safety reasons;
- where the visit is to a place otherwise in normal business or other day-to-day use other than residential use (and where no party to the subject matter of the case attends). This is permissible, but strictly only where it can be done in compliance with SG guidance and subject to precautions as previously advised being respected, along with local restrictions applicable on site.
- where the Reporter requires assistance to understand circumstances on the ground (e.g. to see certain viewpoints). Where that is necessary, the Reporter will consider ways to allow that understanding, while avoiding or minimising that is necessary, precautions as previously advised must be respected. These matters should be intimated to the case officer as soon as they arise and will be dealt with by the Reporter procedurally in the usual way.

The case officer will advise parties of decisions and arrangements in any of these eventualities.

DPEA reserve the right to arrange for other DPEA staff to accompany the Reporter where deemed necessary for any reason (while respecting Covid-19 precautions as previously advised).

Where a site visit is not possible and arrangements cannot be made in a satisfactory and safe way to allow access to the property concerned, the Reporter will consider a visit.

Pre examination meetings

During Phase 3 our default position remains that pre examination meetings will not take place in a format where parties are present. In making arrangements for pre-examination meetings, DPEA will consider various options and consult with parties to ensure the meeting can go ahead as scheduled. This may take the form of a virtual meeting and/ or the exchange of correspondence, or if necessary, an in-person session but only where that can be subject to physical distancing.

The precise arrangements applicable to alternatives will be dependent on the subject matter, size and nature of proceedings and our overarching obligation to secure fair procedure. In doing so, DPEA will provide as much detail in advance as possible.

In doing this, regard will be had to:

- the capacity of individuals with limited access to, knowledge or of experience in using Skype or conference call facilities;
- the difficulty of parties with more than one participating officer or employee being involved (and of legal representatives to take instructions), if complying with separation requirements and therefore potentially not being on the same line or in the same location; and
- the feasibility of operating these for large numbers of participants.

Participants are reminded that in-person or virtual presence of those only wishing to observe is not always essential, as DPEA will endeavour to webcast as frequently as possible.

Where these potential solutions are inappropriate or unsuitable, the Reporter will consider a list.

Inquiries and Hearings

During Phase 3, hearings and inquiries will be permitted in-person, in addition to the continued use of virtual hearings and inquiries.

It will be essential that virtual and in-person hearings and inquiries comply with 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.

The Reporter will consult on the choice of procedure. Virtual procedure is likely to be most suited to those cases, especially hearings, where the number of participants is low and the issues relatively straightforward. In-person procedure is more likely to be required where there are higher numbers of participants, the issues are complex and/ or require cross-examination. We recognise that conducting any form of examination-in-chief, cross-examination and re-examination remotely is difficult and less satisfactory than it would be in one physical location.

DPEA case officers will be in touch on individual existing cases as soon as practicable to indicate to parties the Reporter's intentions on how to proceed.

The setting of such procedures, in cases where inquiries are intended or where public inquiries are required as a matter of law, will be consistent with this Note.

The precise arrangements applicable to alternatives will be dependent on the subject matter, size and nature of proceedings and our overarching obligation to secure a

fair hearing. DPEA will put steps in place to provide as much detail in advance in writing as possible.

We urge parties and their representatives to acknowledge the public interest in finding ways to achieve the outcomes shared by us all in delivering our services in working with us to make inquiries and hearings (so operated) as fair and transparent as possible, even if progressing these by written representations alone would involve the waiving of an entitlement to a Public Inquiry.

It will be expected that representatives of the main parties, including appellants, applicants, council officials and other parties, will be kept to the minimum necessary at in-person procedure.

We recognise the importance of local participation, which becomes harder in the current exceptional circumstances. Participants are reminded that even virtual presence is not always essential, where proceedings are webcast, as DPEA will endeavour to do as frequently as possible. The constraints of physical distancing mean that it is likely that the number of observers present will require to be limited where procedure is held in-person.

In addition, parties are asked to consider whether their attendance at a hearing or inquiry is essential or whether their views will be adequately understood by the Reporter, based on previous written communications, and whether smaller numbers of attendees can be facilitated by third parties with similar interests working together. If you are an interested person and able to rely on your written representations, then you need take no further action. The Reporter may give you an opportunity to make additional written representations.

Where these potential solutions are inappropriate, unsuitable or cannot be agreed by those with key interests, the Reporter will consider a list.

Guidance for those participating in procedure

If you are planning to participate, even remotely:

- whether participating in-person or virtually, please ensure that physical distancing is maintained and refer to the latest NHS Scotland guidance <https://www.nhsinform.scot/illnesses-and-conditions/infections-andpoisoning/coronavirus-covid-19> 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; and
- please 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.

Thank you for your continued co-operation and understanding.

14 July 2020