

## CORONAVIRUS (COVID-19)

### **A Guide to DPEA Operations during Lockdown (updated 17 April 2020)**

#### **General approach**

The vast majority of DPEA work can be carried out by or through written representations and during the lockdown is the default for all of our work. During Covid-19 restrictions, DPEA and appointed Reporters will, as far as possible, seek to keep casework and all other DPEA work progressing and in doing so will be guided by instructions issued by Scottish Government and NHS Scotland.

We recognise that the outbreak represents a very fast moving set of circumstances and any or all guidance will be updated as matters, and related professional advice, develop.

Individual decisions will be made about individual circumstances in seeking to maintain business continuity as far as possible and as appropriate case officers will be in touch with parties in the period ahead. Cases where there is imminent procedure are being prioritised in this way.

We will use written procedure instead of oral procedure, where possible. If it is not possible to substitute a written procedure, then we will try to continue with oral procedure, adapting those procedures – if possible – so that they can be conducted remotely by communications technology. The decisions on how oral procedures will be adapted are for the reporters to make in each case.

All users of our services will appreciate that this will involve changes in arrangements, which will be designed to allow oral procedures to proceed, but only using alternative technologies, reducing risks of the spread of the virus. If that is not possible, affected cases will be sisted.

Our office in Falkirk is CLOSED until further notice. However, email and telephone communication remains in place to the maximum extent possible through call re-direct arrangements. Please continue to use the same phone numbers when contacting us.

*Non-email communication services such as document receipt or delivery are suspended.*

#### **Illness of Reporters**

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 case 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.

### **Restrictions on participants**

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.

Reporters will have due regard to wider operational restrictions and prioritisations applicable to users which limit their ability to function, prepare and participate, both in councils and in respect of other parties.

Reporters will also be mindful of the impact of movement restrictions on the ability of parties and participants to prepare submissions or participate in appeal and other processes.

### **Site visits**

In light of the continuing lockdown, *no site inspections are currently taking place.*

Unaccompanied site inspections will be undertaken only when travel restrictions are lifted and it is otherwise safe to do so.

Arrangements will not be put in place for accompanied site inspections until travel restrictions are lifted.

We recognise the impact of this; Reporters will give consideration to determining matters before them without a site visit, utilising plans and any photographic evidence already submitted. Parties are reminded that the purpose of a site visit would only have been to see the site and representations would not have been able to have been made.

We have trialled a real-life site inspection by Zoom video meeting. This worked well and will be considered for use in other cases where suitable.

Where a site inspection is required but satisfactory alternatives are not possible, the Reporter will assist the case once it can be progressed no further.

The case officer will advise parties of future arrangements in due course.

## **Upcoming oral procedures**

Until further notice, we see no circumstances in which any form of oral procedure, as previously understood, can take place.

This Note sets out the proposed arrangements to be adopted by DPEA. If any of the arrangements set out below are unable to be facilitated, at the sole discretion of the appointed Reporter, the case will be sisted once it can be progressed no further. As sisting is undesirable, we urge co-operation of all parties with the judgement of the Reporter.

Our experience so far indicates that use of Zoom video conferencing best suits our needs and will be our preferred medium for virtual oral procedure. This will also enable upload of the proceedings to our Webcast Library. We will, however, remain open minded in the circumstances of each case.

For all virtual oral procedure cases, the Reporter will seek the cooperation of the parties to narrow down areas of difference or disagreement in advance of the virtual meeting.

Where possible, views of parties will be sought in respect of procedural options.

## **Pre examination meetings, hearings and inquiries**

No pre-examination meetings, hearings or inquiries can take place in an oral form where parties are present. DPEA case officers are in touch on individual cases to indicate to parties the Reporter's intentions for alternative ways in which these will proceed. Such arrangements will be consistent with this note and the relevant statutory requirements.

The precise arrangements applicable to alternatives will be dependent on the subject matter, size and nature of proceedings; any impacts of wider operational restrictions and prioritisations applicable to users which limit their ability to function at this time; availability of witnesses; and our overarching obligation to secure a fair hearing.

These arrangements will have regard to travel restrictions where virtual involvement would not be possible for a participant without travelling to a location other than a person's home to access technological solutions. If that applies to any participant, please alert the case officer concerned.

Pre-examination meetings, hearings and inquiries will be organised so as to take place by either an exchange of written representations or a virtual meeting (or a combination of both). In doing so, DPEA will put steps in place to provide as much detail in advance in writing as possible.

In doing this, regard will be had to:

- the capacity of individuals with limited access (at home or otherwise) to video 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), when 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.

In regard specifically to inquiries, we recognise that:

- a Public Local Inquiry in certain circumstances is a legal entitlement;
- there are potentially significantly greater practical and other challenges for inquiries, compared to pre-examination meetings and hearings;
- conducting any form of examination-in-chief, cross-examination and re-examination remotely may prove to be difficult and less satisfactory than it would be in one physical location;
- the importance of local participation becomes harder in the current exceptional circumstances.

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 (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 Local Inquiry.

On local participation, as above, participants are reminded that even virtual presence is not always essential, where we are able to maintain our ability to webcast proceedings, as DPEA will endeavour to do if possible.

In all cases, parties are asked to consider (a) whether your involvement is essential or whether your views will be adequately understood by the Reporter based upon previous written communications and (b) whether smaller numbers of attendees (whether third parties with similar interests could work together or whether officials from public or other bodies or parties all need to attend).

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 or unsuitable, the Reporter will consider a sist.

## **Conclusion**

We aim to progress all cases as far as we reasonably can, taking current restrictions into account, and always mindful of the need for fairness and openness. To ensure this we will discuss proposed novel procedures with affected parties, and will remain open to suggestions from affected parties on how cases could be progressed.

We thank you for your continued co-operation and understanding.