



DPEA CORONAVIRUS (COVID-19) GUIDANCE

Updated 23 November 2020

This is the tenth DPEA guidance note setting out how we intend to continue progressing our work during the ongoing pandemic.

This update is based on wider Scottish Government guidance contained within [Scotland's Strategic Framework](#) and the [Chief Planner's letter](#) of 29 May.

The vast majority of DPEA work is carried out 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 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 updated 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 remains 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 contacting us.

Current guidance allows exceptions to wider restrictions, where a gathering is for work purposes, or to access public services. **However, given the current overall position with the pandemic, DPEA will take advantage of those exceptions cautiously and sparingly, and only where it is clear that such a gathering is essential, can be conducted safely, and where the procedure could not be undertaken virtually.** DPEA will also be mindful of any localised restrictions in place in particular areas.

1. Experience to date

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.

One in-person inquiry has been successfully completed. This entailed extraordinary physical distancing, hygiene and tracing measures being put in place. It also entailed a strict limitation on the number of attendees present at any one time. DPEA will consider holding further such in-person proceedings only when the overall position

improves, where they are considered to be absolutely essential, where localised restrictions allow, and where similar safeguards can be guaranteed.

Two virtual inquiries concerning Electricity Act wind farm proposals have also been successfully completed. The inquiry were held over four and 6 days respectively and DPEA trained and supported participants in the use of the technology chosen to host the procedure. We have learned from these experiences that cross-examination can be conducted virtually, but that shorter sitting days with more short breaks is desirable.

2. 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 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.

3. 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 have considered this week's announcement by the First Minister and the movement of 11 local authorities into level 4. Our approach, at this stage, in relation to site visits is that we will not carry out any site inspections in level 4 areas; reporters who live in a level 4 area will not travel outwith that area to carry out site inspections; and reporters who live in England will not travel to Scotland to carry out site inspections. We will continue to look at alternatives to site inspections in these cases.

In local authorities currently placed in levels 1, 2 and 3 and dependant on where the reporter lives 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, during the current phase of the pandemic, take place where they would involve or necessitate access to the inside of buildings which are, at the time of the visit, in use as a residence.

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 be undertaken.

Where assistance is required to enter private land or buildings during an unaccompanied site inspection, the only contact to be made by the Reporter 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 Scottish Government guidance on distancing and hygiene measures to minimise the risk of spread through, for example, handling keys, must be respected.

We recognise that this may have the effect of requiring DPEA to continue the need to postpone some site visits during Phase 3; such cases will be placed in *sist*. 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.

4. Pre examination meetings

Given the current overall situation, our default position will be that pre examination meetings will not take place in-person. In making arrangements for pre-examination meetings, DPEA will consider various options and consult with parties to ensure the case can be progressed. This may take the form of a virtual meeting and/ or the exchange of correspondence.

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 of, or experience in using conference call facilities;
- the logistics for 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 *sist*.

5. Inquiries and Hearings

Given the current overall situation, our default position will be that hearings and inquiries will be undertaken virtually.

When the overall situation improves, DPEA will consider holding in-person hearings or inquiries only where they are considered to be absolutely essential, where localised restrictions allow, and where appropriate physical distancing, hygiene and tracing safeguards can be guaranteed. The availability of suitably-sized and Covid-compliant venues means that it will not always be possible to hold in-person proceedings in the locality of the case.

Our experience to date is that a strict limitation on the number of attendees present at any one time will need to be applied. This may preclude the attendance of wider teams or members of the public who wish only to observe. We will endeavour to webcast proceedings to ensure, however, 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 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. It is expected that parties involved in virtual process will respect the objectives of this guidance. Unnecessary gathering to participate in such process, particularly where this involves travelling from higher to lower prevalence areas, must not take place.

The Reporter will consult on the choice of procedure. It is probable that earlier than normal deadlines for the submission of evidence will be imposed, in order to better facilitate preparation for virtual proceedings.

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

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.

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. Parties may also wish to consider progressing their case by written representations alone and waiving the entitlement to a public inquiry.

6. Guidance for those participating in procedure

Whether participating in-person or virtually, please:

- ensure that physical distancing is maintained 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; 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.