

**CORONAVIRUS (COVID-19)
DPEA OPERATIONS AND GUIDANCE ON UNACCOMPANIED SITE VISITS,
PEM's, HEARINGS AND INQUIRIES**

Planning Appeals, Local Development Plan examinations and other DPEA work

This update reflects the Statements of the Prime Minister and First Minister yesterday evening.

The vast majority of DPEA work can be carried out by or through written representations and, with immediate effect, becomes the default for all of our work. During Covid-19 restrictions, DPEA and appointed Reporters as far as possible will seek to keep casework and all other DPEA work progressing and in doing so will be guided by guidance issued by the 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.

We would re-iterate our message that we are responding in turn to immediately upcoming procedures set down or required to be oral and ask you to continue to refrain from contacting DPEA case support workers with suggestions or motions for cancellation, postponement or adjournment of oral processes (or suggestions of alternative means of taking evidence not involving close personal contact). We will address issues arising from future oral procedures (already set) as soon as we can.

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 I hope will appreciate that this will involve changes in arrangements which will be designed to allow procedures set down or required to be oral to proceed but only using alternative technologies, reducing risks of the spread of the virus. If that is not possible, they will be sisted.

Our office in Falkirk is now **CLOSED** until further notice.

However, email communication remains in place.

Our staff remain available by means of telephone contacts, with staff dealing with enquiries to the maximum extent possible through call re-direct arrangements. Please continue to use the same phone numbers when needing to contact us.

Non-email communication services such as document receipt or delivery are suspended. Further advice will be issued in respect of that as soon as we can.

Illness of Reporters

If the appointed Reporter (as a sole appointee) thinks that he or she might have COVID-19, if he or she has been to a country or area with a high risk of COVID-19 in the last 14 days; 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.

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 be mindful of the impact of movement restrictions on the ability of parties and participants (especially community groups) to prepare responses or participate in appeal and other processes.

Upcoming oral procedures

Our guidance of 16 March included advice in order to help reduce the risks of spreading COVID-19 and to keep us all safe. This continues to apply.

However, 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 cases will be sisted.

As sisting is highly undesirable, we urge co-operation of all parties with the judgement of the Reporter.

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

Site visits

In light of the Statements of the Prime Minister and First Minister yesterday evening, **all planned site visits are postponed with immediate effect.**

Due to travel restrictions, this applies both to accompanied and unaccompanied site visits.

We recognise the impact of this and so Reporters will give consideration to determining matters before them without a site visit (if a preferred alternative to sisting).

DPEA will utilise to the fullest extent possible and appropriate alternative means of understanding the site location, such as photographs and virtual technology options.

We do not underestimate the difficulties caused by being unable to visit sites and will consider options on a case by case basis.

Where satisfactory alternatives are not possible, the Reporter will consider a sist.

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.

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

Pre examination meetings and Hearings

As indicated on 23 March, pre examination meetings and Hearings will not take place in an oral form where parties are present.

DPEA case officers will be in touch on individual existing cases as soon as practicable to indicate to parties the Reporters intentions for alternative ways in which these will proceed.

The setting of such procedures in cases in future will be consistent with this Note.

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.

Both pre examination meetings and Hearings will be organised so as to take place by either 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. We recognise that this may involve different degrees of detail as between pre examination meetings and Hearings.

In doing this, regard will be had-

- To the capacity of individuals with limited access (at home or otherwise) to, knowledge or of experience in using Skype or conference call facilities;
- To 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
- To the feasibility of operating these for large numbers of participants.

Participants are though reminded that, especially for Hearings, 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 addition, 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.

Public Local Inquiries

As indicated on 23 March, Public Local Inquiries will not take place in an oral form where parties are present.

DPEA case officers will be in touch on individual existing cases as soon as practicable to indicate to parties the Reporters intentions for alternative ways in which these will proceed.

The future setting of such procedures, in cases where Public Local Inquiries are intended to be set or 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, 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.

These instead will be organised, where at all possible, so as to take place by either written representations or a virtual meeting comprising the Public Local Inquiry (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.

While much of what is said above equally applies, we recognise that there are potentially significantly greater practical and other challenges in so proceeding compared to pre examination meetings and Hearings.

We recognise that conducting any form of examination-in-chief, cross-examination and re-examination remotely is extremely difficult and less satisfactory than it would be in one physical location.

We recognise the importance of local participation which becomes harder in the current exceptional circumstances.

We recognise that a Public Local Inquiry in certain circumstances is a legal entitlement.

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 Public Local 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 addition, parties are asked to consider (a) whether your involvement with a Public Local Inquiry is essential or whether your views will be adequately understood by the Reporter based 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, unsuitable or cannot be agreed by those with key interests, the Reporter will consider a list.

If you are planning to participate in any of these, even remotely, please refer to the latest NHS Scotland guidance <https://www.nhsinform.scot/illnesses-and-conditions/infections-and-poisoning/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.

Thank you for your continued co-operation and understanding.

24 March 2020