



## DPEA CORONAVIRUS (COVID-19) GUIDANCE

Updated 09 April 2021

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 update](#) and the [Chief Planner's letter](#) of 22 March.

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.

**Scottish Government staff have been advised that remote working will remain the default position until at least the end of June.** 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.

The current overall position with the pandemic is encouraging, however, where oral procedure is essential, **DPEA will continue for now to default to virtual oral procedure**, and only consider holding in-person events 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, video evidence 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 we are currently considering how these innovations can be woven into our ways of working beyond the pandemic.

A number of virtual inquiries concerning Electricity Act and Planning Acts cases have also been successfully completed. We continue to learn from these experiences: 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.

One in-person inquiry has been successfully completed during the pandemic. This entailed extraordinary physical distancing, hygiene and tracing measures being put in place. This entailed use of a conference hall with a normal capacity of 800, where the attendance was strictly limited to 30 persons. DPEA will consider holding further such in-person proceedings only when it becomes safe to do so, where they are considered to be absolutely essential, where localised restrictions allow, and where similar safeguards can be guaranteed.

## **2. 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 suspend proceedings for a short period. Where more than one Reporter is appointed in a particular case, a decision on a similar suspension 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**

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.

During the current phase of restrictions, Reporters have been authorised to travel for unaccompanied site inspections where it is safe to do so, and where the round trip can be achieved with no overnight stops. It is currently anticipated that restrictions on overnight stays may be eased towards the end of April.

In exceptional circumstances, the Reporter may undertake an accompanied site visit 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 need to be kept to a minimum and 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 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; such cases will be placed in list. 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, Inquiries and Hearings**

Our default position remains that all pre-examination meetings, hearings and inquiries will be undertaken virtually.

This is consistent with current advice issued by the Scottish Courts and Tribunals Service, which states that there will be a presumption that hearings which require the leading of evidence will also be conducted remotely. Only in exceptional circumstances, where physical distancing restrictions can be adhered to and where evidence cannot be led remotely or it is considered detrimental and undesirable in all of the circumstances to be led remotely, will the physical presence of witnesses be permitted.

In making arrangements for these events, 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 video 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.

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. **Reporters have been instructed to plan for virtual procedure only at this stage.** Any decisions on whether to convert planned virtual procedure to in-person will be taken as the overall situation develops. In that event, in-person arrangements will be explored only when it is more certain that they would be able to proceed in that manner, in order to minimise abortive effort and cost. **Scheduled virtual procedure will not be delayed to allow for in-person procedure.**

Our experience of in-person procedure 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 events 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.

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.

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

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.