



Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise his/her SGL so issues emerging can be considered for future case work.

Guidance note for:	<b>Reporters and parties</b>
Relating to:	<b>Managing an efficient inquiry process</b>
Background:	<p>Relatively few appeals or other cases progress to an inquiry or hearing process. However where this is the case these can, on occasion, result in a protracted process. Such cases will generally take longer than cases dealt with solely by written procedure. Generally there will be legitimate reasons why they take longer: complex and extended procedure may be required properly to address all the substantive issues and interests involved, for instance, in major development proposals.</p> <p>Delays that arise in such procedure will often be outwith the control of the reporter. Nonetheless, to minimise delay, such cases require to be managed efficiently so that the process does not become protracted.</p> <p>This note has been produced to set out the main steps required to ensure a tightly managed and efficient inquiry process. A consequent indicative timeline is attached to this note.</p> <p>An easy read <a href="#">guide to the appeals process</a> contains further general information and explanation relevant to the inquiry and hearing process. It should be read alongside this guidance to place it in context.</p>
Legislation	<p>The Town and Country Planning (Appeals) (Scotland) Regulations 2013 govern the statutory requirements in respect of appeals covered by those Regulations (as set out in GN11).</p> <p>The guidance set out in this note will apply to all public local inquiries and hearings held by Reporters where DPEA is engaged. It supplements the <a href="#">Code of Practice</a> for handling Inquiries under the Electricity Act.</p>
DPEA practice	<p>Guidance Note 11 sets out expectations in respect of the initial stages of appeals and where Hearing and Inquiry Sessions are applicable.</p> <p>The principles of prior disclosure and timely progression of the appeal or application lie at the heart of this process. Clarity as to the position of parties at the earliest stage, those matters in agreement and those that require further process should enable the reporter to move as quickly as possible to issuing the decision or submitting a report and recommendation to Ministers. The following sets out the key steps in the process and an accompanying summary timeline:</p> <p><b><u>Initial Stages</u></b></p> <p>The case officer will not register the case until the electronic file is in order and any information required in hard copy is received.</p>

In appeals under the Town and Country Planning (Appeals) (Scotland) Regulations 2013 the initial process is prescribed:

- The appellant is expected to state their full case at the outset
- The planning authority provides its response within 21 days
- The appellant responds to the council's response within 14 days
- Third parties have 14 days to respond on receipt of notification of the appeal from the planning authority (or 28 days from the appeal being lodged, whichever is the latest)
- The appellant and planning authority can respond within 14 days to any third party responses received.

Thereafter it is for the appointed reporter to decide what further information is necessary and determine the procedure to apply. The process below applies in cases where the reporter determines an inquiry process is necessary.

In other types of cases where referred to us by Ministers or another authority the initial stages are initially handled by others and the file transferred to DPEA.

### **Position Statements**

In some cases that go to inquiry the file may be extensive in documenting the progress of the case up until the point it is registered with DPEA.

Reading into the case and scoping out what is likely to be involved is an important first step for the appointed reporter. To assist with this a **position statement** may be requested.

If position statements are required, they would normally be sought from the appellant (or applicant) and the planning authority. However they might also be sought from key consultees such as NatureScot, Historic Environment Scotland, Transport Scotland or the Scottish Environment Protection Agency.

To date, position statements using a template format have been trialled in wind farm cases (under the Electricity Act). For a wind farm, under Section 36 of the Electricity Act, it is intended that the applicant's position statement will be requested by the Energy Consents Unit when it becomes clear the application is to progress to inquiry. For other relevant cases it may be requested in the first few weeks after a case is registered with DPEA.

It may include details of the Environmental Impact Assessment process, including any changes to a scheme or submission of Additional Environmental Information. It can also assist the reporter to establish the main issues in any case where there has been a protracted process and where the evidence is of a technical nature or involving legislation or process with which the reporter may be unfamiliar.

Parties should be mindful that the reporter has no prior knowledge of the case, the process or the location and may have limited knowledge of the specific subject matter.

### **Choosing to take part**

In cases under the Town and Country Planning (Scotland) Act 1997, any party who has made comment on the topics to be considered at the hearing or inquiry would be invited to participate. These topics are at the reporter's discretion. The reporter may also request the participation of any other party who could provide further information or clarification that would assist the reporter.

In other types of cases there may be a legal right to take part in any public inquiry process. In those cases parties will be sent an 'opt-in' letter within the first few weeks after the case is registered. This initial letter will include an indicative timeline for the process so that parties can plan accordingly. This applies in compulsory purchase cases, to roads and other orders, in certain types of environmental cases and for cases related to the Electricity Act – mainly windfarms.

**If not taking part:** Anyone responding that they do not wish to take part will hear nothing further from us, other than in time receiving notification of the final decision. However, anyone with an interest can keep up to date with the case on our website. The public inquiry can also be observed either by watching the webcast or coming along to the inquiry venue (where it is not being held virtually and subject to any Covid-19 restrictions that might continue to apply).

**If wishing to take part:** parties should respond to our letter of invitation accordingly. They will then be included in all relevant correspondence as the inquiry progresses.

### **Establishing the procedure and setting dates**

Where a party has opted-in they may be invited to attend a meeting to discuss how the inquiry will progress. These are called pre-examination meetings. They should generally **be held by week 12** after the case is registered by us. The meeting would focus on:

- The issues subject of further process
- The documentation required and when it would be submitted
- Who is to participate and how – either by inquiry, hearing or in writing with an explanation of each process
- What parties will be expected to do and the timescales for doing so.

To illustrate the process recent pre-examination meetings on a range of cases can be viewed on [the DPEA webcast library](#).

### **It is important that everyone follows the established timeline**

Slippage can raise issues of fairness for others and disruption to the efficient running of the process. It is essential that no party gains an unfair advantage by lodging late material – for example the delayed submission of a precognition could enable the late party to respond to the precognitions of those parties who submitted theirs timeously.

Every effort should be made to avoid delay in the decision making process. To achieve this, initial correspondence following receipt of the case will:

- Confirm the date of the pre-examination meeting
- Establish a 4 week time-window within which the inquiry or hearing date is to be agreed with the aim of holding the inquiry by week 30 at the latest (in more limited issue planning cases this may be reduced to circa 16-20 weeks)
- In the event that a date is not agreed within the allocated timeframe the reporter will proceed to set the date\*
- Establish a clear timeline for all the required steps leading up to and beyond the inquiry

\* The above reflects ongoing issues where the lack of availability of a preferred consultant or legal representative has led to substantial delay in progressing to the inquiry. It is accepted that there may be very limited circumstances where witness availability may be a limiting factor. However such circumstances should be rare and would result in the application being placed on hold (sist) in the interim.

**Parties should plan ahead based on the early indication of dates and our standard published timeframes for inquiry process as set out in this guidance note.**

### **Virtual procedure and appearances**

In the past DPEA has endeavoured to hold hearings and inquiries in local venues, wherever suitable venues have been available. Recent experience shows virtual process can work effectively. Certainly for most pre-examination meetings these work well. They avoid travel and the difficulties and costs of arranging venues and accommodation. In circumstances where physical distancing restrictions continue to apply, virtual process provides a clear and safe means to progress without the associated health risks.

Consequently until such restrictions lift this virtual process will remain the default position.

Beyond that, efficiency and accessibility considerations indicate virtual process will have continued application particularly for pre-examination meetings, short inquiries and where there is limited or no direct wider public involvement. The use of live webcasting secures such process is transparent and is effectively being held in public.

### **A Proportionate Process**

In some cases there is a right for evidence to be rehearsed through a formal inquiry including cross examination. For some issues this is the appropriate process. Reporters have however led hearings involving multiple parties and addressing complex issues and found these can be effective and efficient. Written exchanges can also prove entirely sufficient to address some matters. The use of hearings and written submissions can also be less daunting for legally unrepresented participants.

The reporter should seek to arrive at a procedure or mix of procedure appropriate to achieving a focus on the determining issues. This should generally be done in consultation with parties, though in planning appeals, the reporter's decision on the choice of procedure will be final.

This approach leads to a more efficient and proportionate process.

### **Narrowing the scope of evidence**

The reporter in making a decision or reporting to Ministers must address the relevant legislative context and policy framework that applies to the case. That is the starting point. In certain relatively limited circumstances Ministers may have restricted the remit of the appointed reporter to specified matters. However in most instances the reporter will be assessing the case afresh regardless of what decisions may have been made or reasons applied earlier in the process.

For most cases that come before reporters, much of the required information to determine the case will already have been submitted. The reporter's focus will generally be on issues that are in dispute between parties. In some cases, the reporter may require parties to address a relevant issue that they have not themselves raised. In such cases, reporters should raise the issue with parties as early as possible, and give them an opportunity to address it.

### **Statements of agreement**

These can be an important tool in clarifying the matters that need not be rehearsed further. They can enable the appointed reporter to focus on the disputed evidence. Statements of agreement will be requested by the reporter relatively early in any inquiry timeline to avoid abortive work and the rehearsal of unnecessary evidence through the inquiry.

### **Keeping evidence focussed and succinct**

Parties should tailor their evidence carefully to focus on the main issues as clarified by the reporter either through the note of the PEM or other specific procedure notice. In doing so parties should:

- Avoid rehearsing process or conduct issues that are unlikely to have any bearing on a planning or other land use decision - there are other available complaints procedures through which to direct such matters
- Be aware the reporter has no previous knowledge of the case and cannot take into account or be aware of matters not raised in evidence
- Avoid submitting "everything but the kitchen sink". This will not be helpful to the reporter – submit only those additional documents to be referenced in precognitions
- Ensure that any evidence or questions in respect of a witness's character, experience or credentials or the conduct of a party are directly and substantively related to the determination of the case. Reporters should be alert to preventing questioning of witnesses that is irrelevant, repetitious or otherwise unfair.
- Focus on assisting the reporter to understand the differences in evidence and the reasons for this
- Submissions will be most helpful if they signpost the reporter through the relevant legislative, policy and other material considerations in a logical and succinct manner.

### **Document Management**

For third parties and for everyone involved, including the reporter, the extent of documentation and the management of it can prove daunting. In some cases various lists of documents by numerous parties and last minute changes and additions have proved confusing for everyone. Consequently this matter should be addressed early. The DPEA case officer will assist with the co-ordination and early assembly of all documents to be referenced in evidence.

The reporter will address this matter early and promote use of the **core documents library** to enable efficient electronic document exchange. The co-operation of parties is vital in achieving this. Recent experience in Section 36 cases has shown significant improvements can be achieved particularly where the applicant has volunteered to assist with the collation of a common set of documents.

If a party attempts to lodge additional material outwith the exchanges allowed for by the reporter, the reporter will require the party to justify why it was not submitted on time, and why it is essential to admit it at this late stage, and seek the views of other parties before deciding whether to admit it. The default position will be that late documents will not be accepted, unless exceptional circumstances apply.

This applies also to closing submissions, which will be expected to be made timeously and concisely.

### **Additional Information**

This is a recurring issue for Section 36 wind farm applications but may also apply to other cases subject to Environmental Impact Assessment Regulations. There are legal requirements for press notification and service of additional environmental information and specified time periods for submission of comments. Whilst this is occasionally a necessary part of the decision making process, parties are asked to signal any likely submissions in this respect at the earliest possible stage.

This should avoid any potential for delay to the established timetable. For Section 36 cases such process, unless arising from a reporter's request for further information, should generally be instigated whilst the case remains with the Energy Consents Unit. This also applies where changes to a scheme are suggested in order to address issues raised in objections or consultation responses. For appeals against refusal of permission or in respect of conditions of permission under the Planning Act, the appellant cannot make an alteration in the proposed development before the reporter and any requirements for additional information are likely to be relatively rare.

### **Summaries of Case**

In reporting to ministers, reporters take care to provide a balanced view of the case. This involves rehearsing the views of the respective parties and recognising that Ministers may arrive at a different conclusion than that recommended by the appointed reporter. However the parties cases can prove difficult and confusing to summarise drawing on material from a range of documents, statements, precognitions and closing submissions. It

is now our view that parties' cases can most efficiently be summarised by parties themselves.

Consequently it is intended that the Reporter, through the pre-examination meeting, will agree an approach to submission of a summary of case on each topic. This would essentially be the parties voice to Ministers.

More detailed stand-alone precognitions avoiding excessive cross referencing will be a helpful first step. This approach may mean that reporters will use their discretion to relax the standard 2000 word limit on precognitions where necessary. In that event, summary precognitions will also be requested.

Thereafter it may be that summaries are further refined after the inquiry as an annex to closing submissions. This summary could also address any main issues not covered through precognitions. This process is currently being trialled and will be subject to future review.

It would remain for the appointed reporter to clarify and scrutinise the summarised evidence. This would be addressed through the reporter's reasoning and conclusions. This reflects an approach akin to that applied in development plan examinations where the council provides summaries of the issues and the reporter can then focus on the reasoning, conclusions and recommendations.

#### **Overall Target Timescales**

As indicated on the attached sample timeline a target of 50 weeks from registration is now to be applied to cases which proceed through inquiry process. In many cases it may prove possible to cut down on that time. However an audit of recent windfarm cases under Section 36 indicates this should result in a significant reduction in DPEA process times.

While reporters will seek to achieve this target, if there are delays arising from matters that are not within a reporter's control, such as the submission of additional information under the EIA regulations, the target will be postponed by the time it takes to deal with that matter.

(Appendix 1 on next page)

### Appendix 1 Indicative timeline to be applied at outset and project managed by the reporter.

The reporter will issue a date and case-specific version of this timeline by week 6, refined following the PEM if necessary.

By Week 6 Initial Case Administration	<ul style="list-style-type: none"> <li>• Case registered once all in order</li> <li>• Opt-in letters issued and responses received to confirm those taking part and indicative timeline</li> <li>• Position statements requested and received where required.</li> <li>• Date of PEM (by week 12) and inquiry month (by week 30) confirmed in all initial correspondence</li> </ul>
By week 10	<ul style="list-style-type: none"> <li>• Agenda and arrangements confirmed for Pre-Examination Meeting (normally held virtually)</li> </ul>
By week 12 Procedure Established	<ul style="list-style-type: none"> <li>• Pre-examination Meeting Held</li> <li>• Pre-examination note confirms all subsequent process</li> <li>• Commence written submissions process if required</li> </ul>
By week 16 Narrow Scope	<ul style="list-style-type: none"> <li>• Draft Statements of agreement</li> <li>• First draft of conditions where required</li> <li>• First draft Core List of Documents and upload on case file as available</li> <li>• Written submissions process closes</li> </ul>
By week 18	<ul style="list-style-type: none"> <li>• Further progress meeting where required</li> <li>• Finalised statements of agreement</li> </ul>
By week 20-22	<ul style="list-style-type: none"> <li>• Hearing and Inquiry Statements including confirmation of parties' position on conditions</li> </ul>
By week 24-26	<ul style="list-style-type: none"> <li>• All remaining documents (allow at least 6 weeks to inquiry)</li> </ul>
By week 26-28	<ul style="list-style-type: none"> <li>• Precognitions</li> </ul>
By week 28-30*	<ul style="list-style-type: none"> <li>• Inquiry process concluded</li> </ul>
By week 31	<ul style="list-style-type: none"> <li>• Closing submissions – other parties</li> </ul>
By week 32	<ul style="list-style-type: none"> <li>• Closing submission – appellant/applicant</li> </ul>
By week 50	<ul style="list-style-type: none"> <li>• Reporter submits inquiry report or issues decision</li> </ul>

\* In more limited issue planning cases this timescale is expected to be reduced so the inquiry follows 8-10 weeks from the procedure being established.