

SCI Protocol on applications for Restriction Orders

1. Introduction

1.1 This Protocol sets out the process for parties to apply for a Restriction Order and the process that the Chair and the Inquiry's legal team will follow when processing such applications.

1.2 The Chair will take such steps as he considers reasonable to:

1.2.1 Provide public access to the documents obtained by the Inquiry, and

1.2.2 To enable members of the public to see and hear Inquiry proceedings.

1.3 The Inquiry recognises that there may be instances where evidence provided to the Inquiry ought to be excluded from disclosure to the public in order to protect against the risk of harm and damage to the public interest.

1.4 Sometimes a party may have a valid reason to object to disclosure or publication of certain documentation or to public attendance at an Inquiry hearing. That party may apply to the Chair for a Restriction Order in accordance with section 19 of the Inquiries Act 2005. The Inquiry's process for the application for a Restriction Order is outlined in paragraph 2 below.

1.5 The Appendix to this Protocol contains a note of the definitions of terms used in this Protocol.

1.6 This Protocol should be read in conjunction with the Inquiry's Protocol on Public Access to Documents. Any defined terms in that Protocol will carry the same meaning in this Protocol.

2. The application process for a Restriction Order

2.1 Applications for a Restriction Order should be made in writing to the Solicitor to the Inquiry; it should be addressed to the Solicitor, and submitted by email to contact@covid19inquiry.scot

2.2 Any such application should include:

2.2.1 An **open** section that describes the restriction sought and provides as much detail about the application and the grounds on which it is made as is possible. The open section should contain only information that the applicant is content for the Inquiry to potentially share with Core Participants, the media and on the Inquiry website; as such, care should be taken not to include any information in the open section that would risk defeating the purpose of the application;

2.2.2 A **closed** section that provides all remaining information about the application and grounds on which it is made. Information contained in the

Closed Section will be treated as “potentially restricted evidence” within the meaning of rule 11(1) of the 2007 Rules; and

2.2.3 Any relevant supporting evidence, which, if considered necessary by the applicant, may be appended to the open and closed sections of the application.

2.3 Upon receipt of an application, the Inquiry will follow the general process set out below:

2.3.1 The open section of the application and any evidence in support will be disclosed to Core Participants and/or on representatives of the media subject the relevant Inquiry Restriction Order. It may also be published on the Inquiry's website. The Chair may issue a note of his provisional views in relation to the application (a 'minded to' decision) when disclosing the open section of the application.

2.3.2 The closed section of the application and any evidence in support may be disclosed to Core Participants, and/or on representatives of the media, and/or on any other person subject to the relevant Inquiry Restriction Order. Before such disclosure is made, the Inquiry's legal team will consult with the applicant as to whether any such disclosure should be made. The Chair will decide whether and to whom to disclose the closed section of the application in light of all the circumstances, including but not limited to:

- a) any representations made by the applicant;
- b) the sensitivity of the material included in the closed section;
- c) the importance of the material included in the closed section to the issues in the application; and
- d) any other representations that he has received.

2.3.3 Consideration will be given as part of this process to the possibility of serving redacted versions of the closed section of the application and supporting evidence.

2.3.4 The Chair will invite Core Participants and representatives of the media to provide written submissions in response to the application (and 'minded to' decisions if applicable). These submissions may be published on the Inquiry's website.

2.3.5 The Chair may thereafter:

- a) Invite Counsel to the Inquiry to file written submissions in response to the application and any 'minded to' decision that was issued; and/or
- b) Hear oral submissions on the application at a hearing, attendance at which may be restricted if necessary to be held in the absence of the public and/or members of the press and/or some or all Core Participants.

2.3.6 The Chair will determine the application and give a written ruling, which will be published on the Inquiry's website. The ruling may contain an addendum in respect of the closed section of the application. This addendum will be shared with the applicant but will not be made public.

2.4 The Chair may vary the procedure set out above as appropriate.

2.5 If a person making an application for a Restriction Order wishes the application to be determined by a procedure other than that set out above, written representations to that effect should be included with the application.

3. Version Control

3.1 This is the first version of the Protocol on applications for Restrictions Orders. It was approved on 2 June 2023 and is issued under the authority of the Chair.

Appendix

Definitions:

In this Protocol:

'2005 Act' means the Inquiries Act 2005.

'2007 Rules' means The Inquiries (Scotland) Rules 2007.

'Chair' means the Chair of the Inquiry.

'Core Participant' means a person designated as such under rule 4 of the 2007 Rules.

'Inquiry' means the Scottish COVID-19 Inquiry.

"Party" means any individual, group of individuals, or organisation. Being a Core Participant is not a prerequisite to being a Party.

'Solicitor' means the Solicitor to the Inquiry.

'Restriction Order' means an order made under section 19(2) of the 2005 Act by the Chair of an Inquiry, which may impose restrictions on attendance at an inquiry, or at any particular part of an inquiry, or disclosure or publication of any evidence or documents given, produced or provided to an inquiry.