

Scottish COVID-19 Inquiry

Protocol on Leave to Appear

1. Introduction

1.1 The Chair to the Scottish COVID-19 Inquiry has determined that core participants who wish to appear at hearings of the Inquiry in the sense described in the next section require to obtain leave from the Chair to do so. This Protocol explains the process for obtaining leave from the Chair.

1.2 This requirement applies to all hearings of the Inquiry other than procedural hearings that may be held before each substantive hearing. A substantive hearing is a hearing where evidence will be led. Procedural hearings will be formally named as such in all communications from the Inquiry. The requirement to obtain leave to appear applies separately to each block of substantive hearings held by the Inquiry – leave to appear at one block of hearings does not confer leave to appear for any subsequent block of hearings. For example, leave to appear at the Inquiry’s health and social care impact hearings in October does not confer a right to appear at any of the Inquiry’s subsequent hearings.

1.3 The test in relation to each hearing will be the same, namely:

1.3.1 whether the person seeking leave to appear has a direct and/or significant interest in the subject matter being dealt with at that hearing.

1.4 Please note that being granted leave to appear does not guarantee a space within the hearing room. The decision as to who will be granted a space within the hearing room will be subject to the available space at the venue with priority being given to those core participants with witnesses in attendance.

1.5 The general rule will be that any core participant without leave will not be able to appear at a hearing or do any of the things described in the next section (subject to paragraph 2.2).

1.6 Please note that the leave to appear process described in this Protocol applies only to those who wish to appear at, and actively participate in, hearings of the Inquiry in the manner explained in the next section. Individuals do not need leave to appear to participate in the Inquiry's "Let's Be Heard" project, to submit evidence to the Inquiry, to give a witness statement or to appear as a witness. Leave to appear is not required simply to observe hearings of the Inquiry, either via the Inquiry's YouTube channel or in person in the space reserved for the public in the Inquiry's hearing room (which will be allocated on a first come first served basis).

1.7 Please note also that the arrangements set out in this protocol, including (for example) the availability of spaces in the hearing room for those participating in the hearing and for members of the public, may require to be modified, perhaps at very short notice.

2. What Does "Appear" Mean For This Purpose?

2.1 Those granted leave to appear at any hearing of the Inquiry will:

2.1.1 be given copies of documents to be referred to at the hearing, prior to these being made available to the public, in advance of the hearing taking place;

2.1.2 be able to request Counsel to the Inquiry to ask certain questions of witnesses;

2.1.3 be able to ask questions of witnesses direct (with the permission of the Chair); and

2.1.4 be able to make opening submissions at the hearing where the Chair directs that such submissions are required.

2.2 However, the making of a closing statement at any hearing where the Chair directs the making of such statements is not contingent on the core participant, or its/their recognised legal representative, having had leave to appear for the hearing to which the closing statement relates. A recognised legal representative, or a core participant who does not have a recognised legal representative, may make a closing statement, if they so wish, notwithstanding that they have not been granted leave to appear for that hearing.

2.3 Those who are given a space within the hearing room will be notified of the number of representatives they can have present there during the hearing in question and it will be for them to decide how they allocate the places within their team

3. How and When To Apply

3.1 Applications should be submitted according to the timetable directed by the Chair for each hearing. This will be set out either at the procedural hearing preceding the hearing in question, or, if there is not to be a procedural hearing, in the notice of a forthcoming hearing on the Inquiry's website (which notice will be published approximately three months before a hearing takes place). Generally, a period of four weeks will be allowed for applications to be made.

3.2 Applications should be made using the form which is available on the website. The form should be completed in full and submitted to coreparticipants@covid19inquiry.scot before the deadline specified in the order or notice. Forms may be completed and submitted by a legal representative on behalf of an applicant.

3.3 The Chair will decide all applications for leave to appear. Before doing so, he may ask the applicant for further information in support of the application. If the Chair grants leave to appear, that may be subject to such conditions as are considered appropriate.

3.4 The Solicitor to the Inquiry will notify all applicants of the outcome of their application within two weeks of the closing date for applications or of the date on which such further information as has been requested by the Chair has been submitted, whichever is later.

4. Late Applications

4.1 Circumstances may arise as a result of which someone who had previously taken the view that they did not have a direct and/or significant interest in the subject matter being dealt with at that hearing changes that view – perhaps as a result of unexpected material being included in a list of documents, or unexpected evidence being led, for example.

4.2 In such circumstances, an application for leave to appear should be made without delay. The application should be made on the form referred to at paragraph 3.2.

4.3 In providing the explanation on the form as to why the applicant has a direct and/or significant interest in the hearing, an explanation should be given as to why it was not possible to make an application in accordance with the timetable set out in section 3. The form should be sent by email to coreparticipants@covid19inquiry.scot with the subject line:

“Urgent: Late Application for Leave To Appear”.

4.4 Following receipt of the application, it will be put in front of the Chair at the earliest possible opportunity. There may be some unavoidable delay, particularly if the late application is made after the hearings are actually underway. The Chair’s decision will be communicated to the applicant as soon as possible, and if leave is granted it will take immediate effect.

5. Further information

5.1 If you have any questions about any of the above, please email coreparticipants@covid19inquiry.scot marked for the attention of the Solicitor to the Inquiry.

6. Version control

6.1 This version of the Protocol on Leave to Appear at Hearings is dated 8 September 2023 and is issued under the authority of the Chair to the Scottish COVID-19 Inquiry. It is the first version of this Protocol.