
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 560

The Inquiries (Scotland) Rules 2007

Manner of proceedings etc.

Documents

3. Any requirement under these Rules that a document is to be given or sent, either to the inquiry or to any person, is satisfied by that document being—

- (a) delivered in person;
- (b) left at a designated postal address;
- (c) sent to a designated postal address by first class post;
- (d) faxed to a designated fax number; or
- (e) sent to a designated email address.

Core participants

4.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry (but only with the consent of that person).

(2) In deciding whether to designate a person as a core participant the chairman must have particular regard for the desirability of including as core participants persons who—

- (a) played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;
- (b) have a significant interest in an important aspect of the matters to which the inquiry relates; or
- (c) may be subject to significant or explicit criticism—
 - (i) during the proceedings at the inquiry, or
 - (ii) in the report (or any interim report) to be delivered under section 24 of the Act (submission of reports).

(3) The chairman may, before the end of the inquiry, specify in writing that a person ceases to be a core participant.

Recognised legal representative

5.—(1) Paragraph (2) applies where—

- (a) a core participant, other than a core participant referred to in rule 6; or
- (b) any other person required or permitted to give evidence or to produce documents or any other thing during the course of the inquiry,

has appointed a qualified lawyer to act on that person's behalf.

(2) The chairman must regard that lawyer as that person's recognised legal representative in respect of the proceedings at the inquiry.

6.—(1) Paragraph (2) applies where—

- (a) there are two or more core participants, each of whom seeks to be legally represented; and
- (b) the chairman considers that—
 - (i) their interests in the outcome of the inquiry are similar;
 - (ii) the facts they are likely to rely on during the course of the inquiry are similar; and
 - (iii) it is fair and proper for them to be jointly represented.

(2) The chairman may—

- (a) direct that those core participants be represented by a single recognised legal representative; and
- (b) approve a qualified lawyer for that purpose.

(3) Any approval given under paragraph (2)(b) must be agreed to by the core participants in question to be effective.

(4) But if no such agreement is reached within a reasonable period, the chairman may approve a qualified lawyer who, in the opinion of the chairman, has sufficient knowledge and experience to act in this capacity.

(5) If the conditions in paragraph (1) no longer apply, a core participant jointly represented under this rule may apply to the chairman, stating the change of circumstances relied upon, to be permitted separate representation.

7.—(1) A core participant, or other person to whom rule 5(1)(b) applies, may appoint other qualified lawyers to assist that person's recognised legal representative in the discharge of the legal representative's functions.

(2) Without prejudice to the generality of paragraph (1), in assisting a person's recognised legal representative those other qualified lawyers may—

- (a) attend inquiry hearings; and
- (b) act as that person's recognised legal representative if appropriate.

(3) Where one of the other qualified lawyers is acting as a recognised legal representative by virtue of paragraph (2)(b), references in these Rules to a recognised legal representative apply to that lawyer as they apply to a recognised legal representative unless the context otherwise requires.

Requests for evidence

8.—(1) The inquiry panel may send a written request to any person for a written statement of evidence.

(2) The inquiry panel must send a written request to any person that it wishes to produce any document or other thing.

(3) The inquiry panel may make a written request for further evidence, being either a written statement or oral evidence.

(4) Any request for a written statement must include a description of the matters or issues to be covered in the statement.

(5) Any written request sent or made under this rule must include a date or time by which the statement, document, other thing or further evidence must be provided.

Oral evidence

9.—(1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only—

- (a) the inquiry panel;
- (b) counsel to the inquiry;
- (c) if counsel has not been appointed, the solicitor to the inquiry; or
- (d) persons entitled to do so under paragraphs (2) to (4),

may examine that witness.

(2) Where a witness, including a core participant, is being examined at an inquiry hearing, the chairman may direct that the recognised legal representative of that witness may examine the witness.

(3) Where—

- (a) a witness has been examined at an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and
- (b) that witness' evidence relates directly to the evidence of another witness,

the witness to whom the evidence relates or the recognised legal representative of that witness may apply to the chairman for permission to examine the witness who has given oral evidence.

(4) A core participant or the recognised legal representative of a core participant may apply to the chairman for permission to examine any witness giving oral evidence.

(5) When making an application under paragraph (3) or (4), the core participant or recognised legal representative must state—

- (a) the matters or issues in respect of which a witness is to be examined;
- (b) whether the examination will raise new matters or issues; or
- (c) where no new matters or issues are likely to be raised, reasons why the examination should be permitted.

(6) Where the chairman so directs, oral evidence may be given at an inquiry hearing by a live television link or other such arrangement by which the witness is able to be seen and heard in the proceedings and is able to see and hear the proceedings while at a place outside the room where the hearing is held.

Opening and closing statements

10.—(1) The recognised legal representative of a core participant may, unless the chairman directs otherwise,—

- (a) make an opening statement to the inquiry panel at the commencement of the first of any inquiry hearings; and
- (b) make a closing statement to the inquiry panel.

(2) A core participant who does not have a recognised legal representative may make the opening and closing statements under the conditions referred to in paragraph (1).

Disclosure of potentially restricted evidence

11.—(1) In this rule—

- (a) “potentially restricted evidence” means any evidence or document which—
 - (i) is in the possession of the inquiry panel, or any member of the inquiry panel; and
 - (ii) is the subject of a relevant application which has not been determined or withdrawn; and
- (b) “relevant application” means an application made by any person that evidence or documents—

- (i) are to be specified in a restriction notice under section 19(2)(a) of the Act (restriction notice given by the Minister on disclosure or publication of evidence or documents);
- (ii) are to be specified in a restriction order under section 19(2)(b) of the Act (restriction order made by the chairman on disclosure or publication of evidence or documents);
or
- (iii) are to be withheld on grounds of public interest immunity,
and which entails the withholding of evidence or documents from the public.

(2) Subject to paragraph (3), potentially restricted evidence is subject to the same restrictions as it would have been subject to if the relevant application had been granted.

(3) Where the conditions in paragraph (4) are satisfied, the chairman may disclose the potentially restricted evidence to a person who would not otherwise be permitted to see it.

(4) The conditions are that—

- (a) the chairman considers that disclosure to an individual is necessary for the determination of the relevant application; and
- (b) the chairman has afforded an opportunity to make representations about whether disclosure to that individual should be permitted, to—
 - (i) the person who has provided or produced the potentially restricted evidence to the inquiry panel; or
 - (ii) any other person making the relevant application.

(5) Any person who is shown potentially restricted evidence under paragraph (3) owes an obligation of confidence to the person who provided or produced that evidence to the inquiry.

(6) A breach of the obligation referred to in paragraph (5) is actionable by the person to whom the obligation is owed.

Warning letters

12.—(1) The chairman may send a warning letter to any person where the chairman considers that—

- (a) the person might be, or has been, criticised during the proceedings at the inquiry;
- (b) criticism of the person may be inferred from evidence given during the proceedings at the inquiry; or
- (c) the person may be criticised in the report (and any interim report).

(2) The warning letter must—

- (a) state what the criticism or proposed criticism is;
- (b) contain a statement of any facts that the chairman considers may substantiate the criticism or proposed criticism;
- (c) refer to any evidence or documents which may support those facts;
- (d) invite the person to make a written statement if the person wishes; and
- (e) note that the information is subject to confidentiality restrictions.

(3) The chairman may send copies of any evidence or documents referred to with the warning letter, if the chairman considers it appropriate to do so.

(4) Where the warning letter is sent to a person by virtue of paragraph (1)(b)—

- (a) paragraph (2) does not apply; but

- (b) the letter must refer to the evidence or documents from which the chairman considers criticism could be inferred.
 - (5) Paragraphs (2) to (4) are subject to any restrictions on the disclosure of evidence, documents or information—
 - (a) imposed under section 19 (restrictions on public access etc.) of the Act;
 - (b) applying by virtue of section 23 of the Act (risk of damage to the economy); or
 - (c) resulting from a determination of public interest immunity.
 - (6) The recipient of a warning letter may disclose it to the recipient’s recognised legal representative.
 - (7) The inquiry panel must not include any significant or explicit criticism of a person in the report (and in any interim report) unless—
 - (a) the chairman has sent that person a warning letter; and
 - (b) the person has been given a reasonable opportunity to respond to the warning letter.
- 13.—**(1) The contents of a warning letter are to be treated as subject to an obligation of confidence owed—
 - (a) separately by each member of the inquiry team to the recipient;
 - (b) by the recipient to the chairman; and
 - (c) by the recipient’s recognised legal representative to the chairman (where the recipient has disclosed the letter under rule 12(6)).
- (2) The obligation of confidence may be waived in writing at any time by the chairman or, as the case may be, by the recipient.
- (3) The inquiry panel’s obligation of confidence arising under this rule ends when the inquiry report is signed in accordance with section 24(4) of the Act.
- (4) All other obligations of confidence arising under this rule end when the inquiry report is published under section 25 of the Act.
- (5) A breach of the obligation referred to in paragraph (1) is actionable by the person to whom the obligation is owed.
- (6) In this rule “the recipient” means the person to whom a warning letter is sent under rule 12.
- 14.** In determining the weight to be accorded to any evidence, the inquiry panel must take no account of whether or not a warning letter was (or was not) sent to any person.

Reports

- 15.—**(1) Following delivery of the report (or any interim report) under section 24(1) of the Act, but at any time prior to publication under section 25 of the Act, the chairman must give a copy of the report (or interim report) which is to be published to—
 - (a) any core participant; and
 - (b) a core participant’s recognised legal representative, if any.
- (2) Subject to paragraph (3), the contents of the report (or any interim report) are to be treated as subject to an obligation of confidence owed to the chairman by each person who has received a copy of the report by virtue of paragraph (1).
- (3) Paragraph (2) applies only until the report (or interim report) has been published by the chairman.
- (4) A breach of the obligation referred to in paragraph (2) is actionable by the chairman.

Records management

16.—(1) Before the setting-up date, or as soon as reasonably practicable after that date, the chairman must consult the Keeper of the Records of Scotland on the manner and format of creating, maintaining and transferring the record of the inquiry.

(2) During the course of the inquiry the chairman must seek to ensure that the record of the inquiry is comprehensive and well-ordered.

(3) At the end of the inquiry, the chairman must transfer the record of the inquiry to the Keeper of the Records of Scotland.