

## Counsel to the Inquiry's explanatory note regarding requests for variations to redactions

### Introduction

1. The purpose of this Explanatory Note is to provide further detail on the function and operation of paragraphs 57-59 of the [Restriction Order Protocol](#) dated 22 July 2020 ('RO Protocol').
2. This provision provides that:  
*"[i]t will be open to a core participant who may be dissatisfied with the extent of any redaction to request in writing that the Chairman vary it. Any such request must be made in writing within 7 days of the disclosure of the redacted document or within such other period as the Chairman may permit. The request must identify the redaction challenged, and should contain submissions setting out the core participant's arguments together with any evidence to which the core participant submits the Chairman should have regard."*

### The Restriction Order Process

3. As outlined in the RO Protocol and further explained in the [Tranche 1 Disclosure Note](#) (paragraphs 35-41), the Inquiry has sought to undertake a methodical and reasoned approach to *applications* for restriction orders under s19 Inquiries Act 2005<sup>1</sup>.
4. All applications required support in the form of reliance on the closed ground(s) previously agreed between the Inquiry and state parties, and supported by generic evidence. They were scrutinised by senior members of the Inquiry Legal Team ('ILT'), and, if based on the anonymity of a person, the reasons behind the granting of that order were considered within this exercise where relevant. If applications were considered unjustified, they were subject to hearings (necessarily held in closed), where they were adjudicated upon by the Chairman. The Inquiry has therefore taken considerable care to ensure that the restriction orders granted over documents are limited only to those which are strictly necessary.
5. Due to the nature of such redactions, unfortunately there is very little which can be said by way of explanation publicly without potentially undermining the very reason behind their imposition. In order to mitigate this difficulty, the Inquiry has published [Open generic grounds for restriction](#), which provide 3 broad and 28 specific categories of grounds for restriction. In respect of many important documents published thus far, the Inquiry has also published corresponding Open Ground Schedules ('OGS'), which indicate the open ground(s) which apply to each redaction<sup>2</sup>.

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<sup>1</sup> The Inquiry has primarily applied restrictions for reasons of data protection and public privacy of its own volition without application. See the [Chairman's Statement on Data Protection and Privacy](#) and the Inquiry's [Internal Guidance Note](#).

<sup>2</sup> These have not been provided in respect of documents where redactions only relate to certain limited grounds. See paragraph 52 [Tranche1 Disclosure Note](#).

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The Inquiry has also provided gists over redacted material where this has proved possible without undermining the reasons for the redaction and capable of expanding on the published open ground(s) in a meaningful way.

6. It is against this background that paragraphs 57-59 of the RO Protocol provide a mechanism for core participants to seek variation of such restriction orders. This provision is intended to afford an opportunity for non-state core participants to bring to the Inquiry's attention matters which tend to question the requirement for a restriction order which has necessarily been granted without their input. In this regard the Inquiry is concerned with matters which constitute a good and compelling reason for a restriction order to be varied. Examples of this could include new evidence, previously unknown to the Inquiry, such as the fact that the document concerned has been published elsewhere in a lesser or unredacted form.
7. By applying detailed and rigorous scrutiny to applications within the preceding restriction order process, the Inquiry has been careful to ensure that the balancing exercise between the need for openness<sup>3</sup> and the harm to the public or an individual which could be caused by publication was conducted in full, independently, and with access to all relevant material. Accordingly, paragraphs 57-59 of the RO Protocol are not intended to invite *general* submissions on this aspect of the restriction order process, as it has already carefully been considered by the Inquiry. Similarly, speculation on the content of, or potential reasons for, a redaction is not the anticipated purpose of this provision - rather, this mechanism is intended to invite applications primarily based on evidence tending to show that a redaction is unnecessary.

### Applications Received

8. Within the course of Tranche 1 the Inquiry has received submissions from core participants pursuant to this provision, most recently challenging the redactions applied to the SDS Annual Reports disclosed to date (1968-1984). In accordance with paragraph 59 of the RO Protocol these submissions were initially considered by the ILT and subsequently referred to the Chairman where necessary.
9. In light of these submissions, the ILT reviewed all redactions applied to the SDS Annual Reports disclosed to date (1968-1984) and their corresponding OGS to ensure they remain justified and necessary. This review exercise was undertaken on an exceptional basis as these were the first set of such reports redacted and disclosed by the Inquiry. As a result, the Inquiry identified a small number of redactions which merit amendment or removal within these annual reports or their OGS. Details of the amendments will be published separately, and the corresponding updated reports or OGS will shortly replace those published on the Inquiry website.

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<sup>3</sup> S18 Inquiries Act 2005