

## COMMERCIAL ACTIONS: GUIDANCE FOR PRACTITIONERS

This Guidance has effect from 27 March 2017.

### **Lodging documents in commercial actions**

1. Documents must be lodged within the timescales provided for by the relevant interlocutor or rule of court.
2. All documents must contain a backing sheet clearly stating the case reference number, the name of all parties to the action and the name and address of the agents/party lodging. The backing sheet should also be marked “intimated” to indicate the document has been intimated to all other parties.
3. A party seeking to lodge a document late must enrol a motion for late receipt of it or make such a motion at the bar. In the latter of these circumstances the document should still be lodged at the public counter or e-mailed to the commercial court inbox, together with a note explaining that it will be moved at the bar, in order that it can be provided to the judge in advance of the hearing.
4. All documents should be marked on the front page with the case name, reference number and party lodging.

### **Lodging documents (other than productions) by email**

5. Subject to paragraph 10 below, the following documents are examples of documents which may be submitted by email:
  - Adjusted pleadings
  - Statements of Issues
  - Notes of Proposals for Further Procedure
  - Notes of Argument
  - Lists of Witnesses & Witness Summaries
  - Inventories of Productions (but not the actual productions)
  - Lists of Authorities (but not the actual authorities)

For the lodging of productions, see paragraphs 14 to 27 below.

6. Documents submitted by email should be sent to:
  - the Commercial Section of the Offices of Court ([gcs@scotcourts.gov.uk](mailto:gcs@scotcourts.gov.uk));and copied to:
  - the commercial court inbox ([Commercial@scotcourts.gov.uk](mailto:Commercial@scotcourts.gov.uk)); and
  - the relevant clerk, if known.
7. Documents being lodged by email should be sent in Microsoft Word (.doc) or text-searchable portable document format (“pdf”).

8. Documents submitted by email will be printed and lodged in process by the staff in the Commercial Section of the Offices of Court.
9. Where documents are submitted by email a further hard copy should not be lodged.

#### **Lodging documents in hard copy**

10. Documents that exceed 20 pages or are in colour must be lodged in hard copy form at the public counter of the Commercial Section of the Offices of Court.
11. Initial Defences, Affidavits, Witness Statements and Expert Reports will not be accepted without a principal signature and therefore must be lodged in hard copy form (except in exceptional circumstances).
12. In exceptional circumstances, where a deadline is imminent and a document that requires to be lodged in hard copy form is unavailable, it may be intimated to the court and the other parties by email in order to meet the deadline. An explanation as to why the document cannot be lodged and the date when it is expected to be available should be stated within the email. Thereafter, when available, the document should be lodged at the public counter. The document will be dated as having been lodged in process on the date the electronic version was intimated.
13. Where documents require to be lodged in hard copy form they must be lodged at the public counter and should not be emailed unless requested to do so.

#### **Productions – Hard Copy/Electronic Format**

14. Due to the voluminous nature of productions, the commercial judges have approved the use of USB Mass Storage Devices (“memory sticks”) for the lodging and storage of productions. Productions will not be accepted by e-mail and will require to be lodged either on a memory stick or in hard copy form at the public counter.
15. If one of the parties is a party litigant, the traditional method of using hard copy productions must be employed unless he/she has agreed to the productions being lodged electronically.

#### **Lodging productions in hard copy**

16. Productions cannot be stored within the Offices of Court. In the circumstances, an Inventory of Productions may be lodged in process in *lieu* of the productions. The inventory should be marked “intimated” on the backing sheet to indicate that a copy of it has been sent to every other party in accordance with rule 4.5. This is on the understanding that parties will provide the productions to the

other parties/the court upon request. The borrowing receipt should still be completed to indicate who has custody of the productions.

17. Where hard copy productions are lodged in process (or returned to process) in a box, the box should be clearly labelled with the case reference number, the names of the parties to the action and the name and address of the agents/party lodging.
18. Two business days prior to each hearing (including, but not restricted to, preliminary, procedural, by order or motion roll hearings), all hard copy productions that may be referred to at the hearing must be returned to the Commercial Section of the Offices of Court in order that they are available for the judge. A working bundle should also be produced in accordance with the guidance at paragraphs 41 and 42.

#### **Lodging productions on a memory stick**

19. If a party opts to lodge its productions electronically it is on the condition that hard copies will be produced if the court or other parties so request.
20. The memory stick, together with a hard copy of the inventory of productions, should be lodged at the public counter. It should comply with the guidance on memory stick layout found at paragraphs 47-56.
21. The inventory should be marked "intimated" on the backing sheet to indicate that a copy of it has been sent to every other party in accordance with rule 4.5.
22. Parties should also intimate the productions electronically (or in whichever manner may be suitable) to every other party to the action.
23. The hard copy inventory of productions should clearly state that the productions listed are contained on a memory stick.
24. The files on the memory stick should be numbered and named to correspond with what is listed on the inventory.
25. The inventory of process will be marked up accordingly, with an annotation that the productions are stored on a memory stick, by the staff in the Offices of Court.
26. When a party wishes to lodge further inventories, the memory stick should be borrowed out in order to add the further productions to it. It should then be returned to process and the further inventory lodged.
27. Memory sticks may not be borrowed out by any other parties to the action.

### **Lodging authorities on a memory stick**

28. Parties are encouraged to produce bundles of authorities in electronic format, however, a hard copy of the bundle should be produced if the court so requests.
29. A memory stick, together with a hard copy list of the authorities, should be lodged at the public counter. It should comply with the guidance on memory stick layout found at paragraphs 47-56.

### **Lodging witness statements/affidavits**

30. Signed witness statements/affidavits should be lodged as parts of process not as productions.
31. Witness statements/affidavits must be presented for lodging in process with a backing sheet attached which clearly indicates the party on behalf of whom the statement is being lodged.
32. Witness statements must be signed prior to lodging and lodged in hard copy form.
33. Where witness statements have been ordered for use at proof, a folder containing each parties' statements, with an index, should be produced by the date specified in the relevant interlocutor, together with a copy of same for the use of the presiding judge.
34. Witness statements should be produced in electronic format if the court so requests.

### **Expert reports**

35. Expert reports should be lodged as parts of process not as productions.
36. Expert reports must be presented for lodging in process with a backing sheet attached which clearly indicates the party on behalf of whom the report is being lodged.
37. Expert reports must be signed prior to lodging and lodged in hard copy form.
38. Appendices to expert reports may be lodged on a memory stick. It should comply with the guidance on memory stick layout found at paragraphs 47-56.
39. When a joint bundle of productions has been ordered, any expert reports previously lodged should be reproduced within the joint bundle.
40. Expert reports should be available to be produced in electronic format if the court so requests.

### **Working bundle to be lodged in advance of hearing**

41. Two business days prior to each hearing (including, but not restricted to, preliminary, procedural, by order or motion roll hearings), parties should prepare for the use of the court a working bundle in which any productions, expert reports, witness statements and authorities to which reference is to be made are arranged chronologically or in another appropriate order without multiple copies of the same document. The bundle for a motion hearing should be prepared by the party enrolling the motion; otherwise, unless there is agreement to the contrary, the bundle should be prepared by the pursuer.
42. The working bundle may be produced in hard copy or electronic format. If it is being produced electronically it should comply with the guidance on memory stick layout found at paragraphs 47-56.
43. At the end of each hearing parties should enquire with the clerk of court whether the working bundle can be uplifted at that point or at a later date when requested to do so by the Offices of Court.

### **Joint bundle for proof**

44. Two copies of the joint bundle must be lodged by the date specified in the relevant interlocutor. One set is for the witnesses and the other is for the presiding judge.
45. Where the joint bundle is being presented in electronic format it should comply with the guidance on memory stick layout found at paragraphs 47-56. It should also be clarified with the judge/clerk whether hard copies of the joint bundle and the original productions are required.
46. Where the joint bundle is presented electronically, the parties must provide at the hearing an operator to navigate the bundle and display the productions referred to.

### **Memory stick layout**

47. Memory sticks should be presented for lodging in a clear plastic wallet together with an inventory listing the documents contained within it. The documents held on the memory stick must correspond exactly with what is listed in the inventory.
48. The memory stick must have a label securely attached briefly outlining what is contained within the memory stick, the party lodging it, the name of the case and the case reference number. (E.g. Joint Bundle lodged by the pursuer in Forbes v Anderson CA55/17.)

49. All memory sticks should be encrypted. The decryption password should be emailed to the commercial clerks at [Commercial@scotcourts.gov.uk](mailto:Commercial@scotcourts.gov.uk).
50. Excessively large electronic files should be avoided. File size should be such as to permit an amended version (for example with highlighting) to be saved without delay.
51. All memory sticks should be Windows and Mac compatible.
52. The memory stick should either be configured:
- to contain a folder bearing the name of the action and separate sub-folders as required – e.g. the joint bundle should be contained in one sub-folder named “Joint Bundle”, the pursuer’s witness statements should be contained in one sub-folder named “Pursuer’s Witness Statements” and so on. Each sub-folder should also contain an index with clickable links to the relevant document; **or**
  - to contain a single paginated PDF with a clickable table of contents for ease of navigation.
53. Each document should be in a separate text-searchable portable document format (“pdf”) file. Where possible, source materials (e.g. cases and statutes), should be printed to pdf from an existing digital source. For example, case law retrieved from an online source or CD-ROM can be downloaded in or printed directly to pdf. If source materials to be included in the memory stick are not available in digital format, the documents should be scanned and, if they contain text, the images should be processed in an optical character recognition (“OCR”) programme, and saved as pdf text-searchable image files. (The full working version of Adobe Acrobat has the capability to perform OCR). Digital photographs should be printed to pdf and hard copy photographs should be scanned and saved as pdf files.
54. Each pdf file should be named to correspond with the index number in the sub-folder, and a brief description – e.g. “003 Letter 26 January 2011 Smith to Jones”, “011 Affidavit Archibald Hunter 17 December 2014”.
55. Authorities should be identified by the index number and citation, e.g. “016 Mayo Associates SA v Cantrade Private Bank Switzerland (CI) Ltd [1998] JLR 173”.
56. All documents contained within the memory stick should fully correspond with any hard copy documents.

### **Enrolling motions by email**

57. Requests to move or discharge hearings or to extend or vary time limits may be made by email. Any such request should be copied to the agents for all other parties so that they may confirm their consent or lack of opposition. Such requests will be feed as motions to the requesting party.
58. Motions in Form 23.2 and notices of opposition in Form 23.4 may be enrolled by emailing the completed form to [gcs@scotcourts.gov.uk](mailto:gcs@scotcourts.gov.uk) and [Commercial@scotcourts.gov.uk](mailto:Commercial@scotcourts.gov.uk).
59. Where any documents bear a signature, e.g. joint minutes, a scanned copy of the signed document should be emailed to the Commercial Section of the Offices of the Court, but the hard copy original document should be available for production on request by the Commercial Section or by order of the court.

### **Hearings on the motion roll**

60. Hearings on the motion roll are fixed at the convenience of the court.
61. Parties will receive notification by email of the date and time fixed for such hearings.

### **Correspondence by email**

62. In fairness to all parties and to enable matters to be dealt with expeditiously, please ensure that any emailed enquiry about availability of court dates has the agents for all other parties copied in.
63. Please do not copy the commercial clerks into e-mailed discussions between parties.
64. Emails should only be sent to [gcs@scotcourts.gov.uk](mailto:gcs@scotcourts.gov.uk) when lodging documents or when enrolling motions in Form 23.2 and notices of opposition in Form 23.4.

### **Out of hours**

65. If in the course of an evening, weekend or public holiday an agent or counsel has important information about a case, they should contact Parliament House reception on 0131 225 2595.
66. By important information we mean for example that a proof or debate is not going to proceed the following day.
67. The person at reception will make contact with the out of hours' clerk.

68. The out of hours' clerk will then convey the information to the appropriate commercial judge.